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Senator JAKE GARN, a Utah Republican, is a former member of the Armed Services Committee and currently sits on the Senate Select Committee on Intelligence.

Senator Garn discusses the "spinelessness with which the American government has enforced the terms of the SALT accord" and its "abysmal" record in keeping the public informed of Soviet violations. The Soviet Union has taken systematic liberties with the terms of SALT I, he argues, and the U.S. government has made special efforts to excuse their transgressions. He groups Soviet violations into three areas: "(1) deployment of prohibited offensive force levels; (2) development of prohibited ABM capabilities; and (3) concealment and deception activities related to both of the above." The author cites the failure of the U.S. government to enforce Soviet compliance with the provision prohibiting conversion of light ICBM launchers into launchers for heavy ICBMs as having "undermined the SALT exercise more than any other single factor, even to the extent of making it counterproductive in its effect on U.S. national security." But there are many other areas in which the Soviets have ignored the SALT I limitations. They have failed to dismantle missiles as stipulated by the accord, installed radar and other equipment for prohibited ABM forces, and persistently interfered with American efforts to verify compliance with SALT. In each instance, the U.S. response has been weak, encouraging the Soviets to try still more abuses. Senator Garn recommends much more vigorous programs and enforcement than are now envisioned for SALT II in an attempt to prevent "a several fold increase in the already lopsided margin of superiority [the Soviets] obtained in SALT I."

VERMONT ROYSTER has served as reporter, editor and columnist for *The Wall Street Journal* and has received several awards in the field of journalism, including the Pulitzer Prize for Editorial Writing in 1953. He is the author of several books, including *Journey Through the Soviet Union* and *A Pride of Prejudices,* and numerous articles on financial and economic subjects.

This article in *Policy Review* is based upon a speech delivered by Mr. Royster to the National Press Club. Excerpts from it have appeared in *The Wall Street Journal* and *Quill.* It is published in its essential entirety for the first time.

Lamenting the position of the press today as the enemy of government, Mr. Royster compares the press corps of the thirties to that of today. Competitive and investigative reporting are nothing new, he asserts; reporters then were cynical, skeptical "watchdogs" of government, acting as the Fourth Estate of the realm, as a part of the American system of checks and balances. The position of the press as the adversary of government, however, awakens a corresponding hostility of the government toward the press, signs of which are already appearing. The press should concentrate

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on protecting the rights of all citizens, not claiming exemptions from the obligations of all citizens. Otherwise, he warns, "Someday the people may come to think us arrogant." And, Mr. Royster reminds us, freedom of the press "is a political right granted by the people in a political document, and what the people grant they can, if they ever choose, take away."

DARRELL M. TRENT is Associate Director and Senior Research Fellow of the Hoover Institution, Stanford University. He is the former Deputy Director and Acting Director of the President's Office of Emergency Preparedness, having responsibility for the federal apparatus for managing civil emergency crises.

Although the United States has remained relatively untouched by increasingly sophisticated and interlocking terrorist groups in the last decade, Mr. Trent, in this article, questions U.S. preparedness in dealing with future threats, which are sure to increase if for no other reason than that the U.S. has "the most sophisticated and complete media coverage of any nation on earth" and is, therefore, a perfect target for terrorists seeking broad coverage. Mr. Trent discusses President Carter's Reorganization Plan Number 3 which merges federal government emergency preparedness and disaster response programs to achieve "a more manageable and responsive federal system." This plan authorizes the establishment of a Federal Emergency Management Agency by April 1, 1979. Mr. Trent makes various recommendations for effective coordination of responsibility among federal agencies, the Executive Branch, the new Federal Emergency Management Agency, and the Emergency Management Committee to ensure that this new agency will not become "one more unworkable structure . . . superimposed on a bureaucracy that remains ill-equipped for the demands of crisis management."

This essay expresses solely the views of the author. It is in part drawn from research from a forthcoming book, *Terrorism, Threat, Reality, Response,* by Robert H. Kupperman and Darrell M. Trent (Stanford, California: Hoover Institution Press, 1979).

PHYLLIS SCHLAFLY is a graduate of Washington University (B.A.), Harvard University (M.A.), Washington University Law School (J.D.), and holds an honorary Doctor of Laws from Niagara University. She is the author of nine books, the publisher of a monthly newsletter, and writes a semiweekly syndicated newspaper column.

Arguing that, by examining the interpretation by the courts of the seventeen state constitutions which have provisions that might be called "State ERAs," one can predict what Section 1 of the Federal ERA, if ever ratified, would require on a nationwide basis, Mrs. Schlafly concludes that a federal ERA would have no uniquely beneficial results. In fact, wives will most likely lose their traditional rights to be supported and receive custody of their children, while traditional objections to homosexual marriages and

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government-funded abortions are likely to be upset. And, Mrs. Schlafly warns, "We have so far seen only the tip of the iceberg of the harm ERA can do." Section 2 of the Amendment "has the potential of causing such a massive shift of power from the states to the federal government that the changes accomplished by Section 1 would be dwarfed by comparison."

In addition, because of the vagueness of such amendments the courts, of necessity, will be drawn into the making of more and more decisions affecting the daily lives of millions of people.

KENNETH L. ADELMAN is currently writing a book on the foreign policy of the Carter Administration. The holder of a Ph.D. in foreign affairs from Georgetown University, he has been a special assistant to former Secretary of Defense Donald Rumsfeld and has served as a Congressional Relations Officer with the State Department. He is the author of many articles which have appeared in such journals as *Foreign Affairs, Foreign Policy, Orbis,* and *The Wall Street Journal.*

In an analysis of the first year of President Carter's foreign policy published in the Winter 1978 issue of *Policy Review,* Dr. Adelman predicted (almost on the nose) that recognition of the Peking government would come about in early 1979, after the 1978 elections but far enough away from the even more important 1980 poll.

In anticipation of the Administration's campaign for SALT II, Dr. Adelman outlines the present tactics of the campaign headed by the Department of State. Planning four hundred tours for the SALT "extravaganza"—at considerable taxpayer expense—SWIG (SALT Working Group) hopes to assure a confused and ambivalent public of the flimsiness of the "so-called threats against Western interests." The State Department, "Americans for SALT," and the Arms Control and Disarmament Agency, "with visions of mushroom clouds dancing in their heads," claim that the only alternative to SALT II is the Armageddon, threaten that its defeat will devastate the Presidency, and promise a new world order of peace after its ratification. It is disheartening, writes Dr. Adelman, that the two "beacons of truth on SALT" are the Soviets who claim that SALT II consists of no more than "minor tinkerings" and the anti-military disarmers who fear that this treaty will "make a mockery of arms limitations agreements."

KENNETH WATKINS is Senior Lecturer in Political Theory and Institutions at the University of Sheffield, England. He is the editor of *In Defense of Freedom* and the author of *Britain Divided* and many other works.

Although the American news media portrayed the recent British election campaign as a relatively tame affair, Dr. Watkins shows that the electorate faced an unusually dramatic selection. The Labor Party, increasingly an instrument of its most radical elements, presented a program that

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would have changed British society irreversibly. The Conservative victory forestalled that possibility, although Labor will likely become even more militant in opposition.

JURGEN SCHWARZ, currently a Distinguished Scholar in residence at The Heritage Foundation, is Professor of Political Science and International Relations at the Federal University of the Armed Forces in Munich, West Germany. His research and teaching activities have previously taken him to the Universities of Freiburg, Munich, and Hamburg, the Research Institute for International Politics, and Harvard University.

Dr. Schwarz lists the distribution of seats in the newly-elected European Parliament and discusses its future role as seen by its critics and supporters. He sees only a marginal role for the parliament. The most powerful body is still the European Council in this confederative union of sovereign nation-states.

OTTO VON HABSBURG holds the Ph.D. degree from the University of Louvain and is the author of many books, including a biography of Charles V. He has long been active in the cause of European unity and was just elected to the European Parliament from the Federal Republic of Germany.

The author argues that the new European parliament will have a far more important impact than most commentators currently realize. In the face of a growing Soviet threat to Europe's integrity, this united political body would give new strength to the West. Since it will be elected by the people, rather than appointed by national governments, the new parliament will be a major first step toward a sovereign European union.

PAUL CRAIG ROBERTS is Associate Editor of the Editorial Page of *The Wall Street Journal* and Senior Research Fellow at the Hoover Institution, Stanford, California. RICHARD E. WAGNER is a professor of economics at Virginia Polytechnic Institute and State University.

The authors, in this article, argue that tax reforms, promoted by those who claim that the present tax system favors the well-to-do while their reforms will help the poor, are simply means of strengthening the power of government. Messrs. Roberts and Wagner warn that arguments advocating such reforms as the taxation of fringe benefits, the elimination of itemized deductions, the expansion in the share of income that is provided in-kind by government, and the increase in the progressivity of income tax should be treated skeptically. "Many tax reformers," they write, "would have us playing a negative sum game that benefits only the power brokers in Washington."

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Book reviews were written by SIDNEY HOOK (who is Professor of Philosophy Emeritus at New York University, a Fellow at Stanford's Hoover Institution, and the author of numerous books including *Education for Modern Man* and *Revolution, Reform, and Social Justice),* ROBERT LEKACHMAN (who is Distinguished Professor of Economics at Lehman College, City University of New York, and author of *The Age of Keynes* and *Economists at Bay),* and DAVID A. WILLIAMS (who has taught economics at the University of Dallas).

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Editorial Note

The first issue of *Policy Review* appeared in August of 1977. Almost two years later, I am leaving the editorship of *Policy Review* in order to pursue other activities in my home state of Vermont.

The past two years have been immensely interesting and rewarding to me and I want to thank all of the people at The Heritage Foundation, including the staff of *Policy Review,* the members of our editorial board and our authors. It is these individuals who have made possible the success which *Policy Review* has achieved in that time.

In our first issue, we introduced our new journal by saying that

> *Policy Review* was founded because alternative and timely critiques and solutions are clearly needed; we will be contributing to this necessary debate by asking authors representing a variety of view-points to set them forth.
>
> We will bring to the attention of policymakers, scholars and the educated public the ideas and analyses of professionals who have studied the effects of government policies and who write in clear English.
>
> We will treat serious questions seriously but our goal is to do so with some verve and style.

The response of the academic, policymaking and publishing communities to the launching of our new quarterly has been more than we expected. Thanks largely to the efforts of our innovative Business Manager, David Durham, and our promotion consultant, Ron Burr, our paid circulation has climbed steadily to the 7,000 level. We are now within striking distance of our goal of 15,000 subscriptions.

Many of our articles have been read by many more persons than those who read *Policy Review* itself. Our imaginative Public Relations Department, led by Herb Berkowitz and Hugh Newton, have prepared "Op-Ed" columns of 800 words each, based upon some of the most newsworthy articles in each issue. These have been subsequently published in such widely-read periodicals as *The New York Times, The Washington Star,*

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The Chicago Tribune, The Los Angeles Times, The St. Louis Post Dispatch, The Wall Street Journal, The Daily Mail and *The Daily Telegraph* of London and many other newspapers both in this country and abroad.

Although we are a quarterly, we have tried to avoid becoming a leisurely one. By publishing preprints of particularly timely articles, we have been able to ensure that these articles will be available to policymakers and the press before and not after decisions are made.

We also introduced *Notes From Policy Review*, six pages in newsletter format, which allows us to reprint four Op-Ed articles; through this means we have been able to disseminate the principal ideas of some of our authors to 100,000 additional readers at a low cost.

Over the past nine issues we have been particularly proud to have published such distinguished authors as Nobel Laureate Milton Friedman, Washington attorney Max Kampelman, U.S. Senators Barry Goldwater, Edward Kennedy and Daniel Patrick Moynihan, Director of the Ethics and Public Policy Center Ernest W. Lefever, former Under Secretary of State Eugene Rostow, former Deputy Shadow Minister of Defense Winston Churchill, II, and others of similar stature.

As Director of Studies of The Heritage Foundation, I have also had the good fortune to work closely with three of the Foundation's Distinguished Scholars, all of whom have contributed to *Policy Review*. Political Scientist Stephen Haseler, of the City of London Polytechnic, wrote a study on Eurocommunism (in cooperation with Roy Godson) while he was here. The resulting volume has been called by Sidney Hook "indisputably the best book on the subject." Economist Walter Williams, in our second issue, demonstrated how many government regulations retard the progress of minorities. This provocative essay was subsequently reprinted or extensively quoted in over 2,000 newspapers. The current incumbent of that office, Political Scientist Jurgen Schwarz of the Federal Republic of Germany, is now doing research on the ways in which Congress shares in the making of U.S. foreign policy.

Since 1977, the Department of Studies has also published several books and monographs, including *The Welfare Industry* by Charles Hobbs and *A New Strategy for the West* by Daniel O. Graham. On the press at the moment is a new anthology, discussing the reasons why some intellectuals are skeptical

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of the marketplace, edited by prolific author Ernest van den Haag, with contributions from such eminent scholars as Lewis Feuer, Nathan Glazer, Stanley Rothman and Peter Bauer.

As I wrote at the beginning of this farewell note, *Policy Review* would not exist were it not for the efforts of dozens of people. Special thanks are owed to the President of The Heritage Foundation and our Publisher, Edwin J. Feulner, Jr., who has taken an active interest in all parts of the process from beginning to end; the Chairman of our Editorial Board, David I. Meiselman, and the other members of that board, as well as our Adjunct Scholars, for their continuing stream of advice; Phil N. Truluck, our Vice President and Director of Research; Jeffrey Gayner, our Director of Foreign Policy Studies; and all of The Heritage Foundation staff, in particular, our chief copyreader, Richard Odermatt, who has caught countless errors before rather than after they appeared in print. The quality of the printing is due to the work of Corporate Press of Washington, D.C.

The publication of *Policy Review* will remain in the able hands of our staff, now led by our newly-appointed Managing Editor, Philip Lawler; our two Assistant Editors, Beverly Childers and Robert Blake, and our Editorial Assistant, Marion Green. Miss Childers, to our regret, will soon be leaving *Policy Review* to accept a fellowship for doctoral studies at George Washington University. They have all lent their considerable talents to making *Policy Review* a better journal than it otherwise would be. Two former members of our staff have moved on to other pursuits, but they should not be forgotten. These are Editorial Assistants John Seiler and Christopher Thiele.

The new Editor of *Policy Review* will be a member of our Editorial Board who is currently an editorial writer and columnist with *The Daily Telegraph* in London, John O'Sullivan. Mr. O'Sullivan is a frequent contributor to journals on both sides of the Atlantic, including *Encounter* and *Commentary*. He is a member of the Mont Pelerin Society and the co-author of several works on economics.

Finally, I hope that all of our readers will continue to subscribe to *Policy Review* as faithfully as I will in the years ahead.

R.L.S.

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The Suppression of Information Concerning Soviet SALT Violations by the U.S. Government

JAKE GARN

Since 1967 the government of the United States has been committed to the notion that strategic arms limitation is the answer to U.S. strategic problems.[1] In 1972 the U.S. signed what was then hailed as an epic arms control agreement, the SALT I accords. The net result thus far has been the creation of a limited capability but rapidly expandable Soviet ABM force and a fivefold increase in the number of Soviet strategic nuclear warheads; admittedly, the U.S. also increased its warhead numbers and fortunately maintains a two-to-one lead. However, the number of Soviet warheads should equal those of the U.S. by 1982.[2] In addition, the Soviets will increase their present lead in throw-weight and megatonnage. Much of this threat has developed because the United States had not demanded Soviet compliance with the 1972 accords as they were explained to Congress.

The issue of SALT compliance has been a very sensitive one for the U.S. government. The issue is political dynamite and has been recognized as such. As the Senate Select Intelligence Committee said in 1976, "The spectre of important information, suggesting Soviet violation of strategic arms limitations, purposely withheld for extended periods of time from analysts, decision makers and Members of Congress, has caused great controversy within the Intelligence Community."[3] The Committee reported that, "The record indicates that Dr. Kissinger, U.S. architect of the accords, has attempted to control the dissemination and analysis of data on apparent Soviet violations of the SALT pact."[4] The CIA was told that "Dr.

1. *Statement of Secretary of Defense Robert S. McNamara Before The Senate Armed Services Committee On The Fiscal Year 1969-73 Defense Program and 1969 Defense Budget* (Washington: Government Printing Office, 1968) p. 54; and *Department of Defense Annual Report Fiscal Year 1979* (Washington: Defense Department, 1978) p. 47.

2. *Is America Becoming Number 2?* (Washington: Committee on the Present Danger, 1978) pp. 8-11.

3. "The Select Committee Investigative Record," *The Village Voice*, February 16, 1976, p. 92.

4. *Ibid.*

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Kissinger wanted to avoid any written judgments to the effect that the Soviets have violated any of the SALT agreements. If the Director believes the Soviets may be in violation, this should be the subject of a memorandum from him to Dr. Kissinger. The judgment that a violation is considered to have occurred is to be one that will be made at the NSC level."[5]

The implications of the subversion of congressional policy are startling. Under SALT II, judgment of the most basic characteristics of every Soviet system could suddenly become a political decision to be made by the political establishment of the NSC staff. The record of Soviet compliance with the terms of the SALT I accords and other related arms control agreements is not good. It suggests that the SALT II limits, instead of being a ceiling for Soviet capabilities, will provide the loopholes through which Soviet strategic forces will seek to emerge as a force superior to that of the U.S. We must be certain that U.S. intelligence estimates will clearly portray Soviet capabilities as they are, particularly when they violate the SALT limitations.

The record of the United States government in enforcing the SALT accords and in keeping the public informed about compliance issues is abysmal. In not a single instance has the government taken the initiative in bringing a violation or potential violation to the attention of the American people. In every case it has simply reacted to press exposure of the violations. In each case the U.S. has provided thin rationalizations of the Soviet violation.

The recent report of Secretary of State Cyrus Vance on SALT compliance is probably the most startling of these efforts condoning Soviet violations. It reads more like a slickly worded, artfully designed legal brief than a report to the Congress from what claims to be an open Administration. The most shocking aspect of this report was the disclosure of a virtual agreement not to reveal SALT violations to the American people in the name of maintaining diplomatic secrecy.[6]

5. *Ibid.*

6. The regulations of the Standing Consultative Commission, which was established for the discussion of SALT compliance matters, states, "The proceedings of the Standing Consultative Commission shall be conducted in private. The Standing Consultative Commission may not make its proceedings public except with the express consent of both

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In late 1977, Melvin Laird, Secretary of Defense during the negotiation of the SALT I accords, declared, "The evidence is incontrovertible that the Soviet Union has repeatedly flagrantly and indeed contemptuously violated the treaties to which we have adhered."[7] This is perhaps a slight overstatement. Another way to put it is that the Soviets have on a very large scale selectively violated the agreements in areas that are highly significant strategically and closely linked to the Soviet objective of obtaining a war-fighting, war-surviving, war-winning strategic nuclear capability against the United States. They have tended to avoid open violations in areas where there is little strategic significance and violations that are relatively easy to spot.

The Soviet violations can be grouped into three areas: (1) deployment of prohibited offensive force levels; (2) development of prohibited ABM capabilities; and (3) concealment and deception activities related to both of the above.

Strategic Offensive Force Deployment

The Interim Agreement on strategic offensive forces limited ICBM forces to those silos operational or under construction on 1 July 1972. No specific number was included in the Treaty. The agreement provided that launchers for ICBMs or other heavy ICBMs would not be converted into launchers for modern heavy ICBMs. The agreement included no definition of a heavy ICBM, but the U.S. issued a unilateral statement that it would regard "any ICBM having a volume significantly greater than that of the largest light ICBM now operational on either side a heavy ICBM."

The Protocol to the Interim Agreement limited the U.S. to 710 ballistic missile launchers on 44 modern ballistic missile submarines and the Soviets to 950 launchers on 62 modern submarines (post-1964 designs). To go above 656 SLBM launchers for the U.S. and 740 for the U.S.S.R. an equal number of older

Commissioners." Quoted in "Compliance With the SALT I Agreements," *Congressional Record*, February 28, 1978, p. S2336. This is very convenient for the Administration, because once they discuss something with the Soviets they can then argue that they are bound by agreement not to tell the American people about the issue.

7. Melvin R. Laird, "Arms Control: The Russians Are Cheating!" *Reader's Digest*, December 1977, p. 98.

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ICBMs or older SLBMs would have to be retired.[8]

The prohibition of the conversion of light ICBM launchers into launchers for heavy ICBMs has been widely recognized as the most significant SALT I Interim Agreement limitation on offensive forces. The failure of the U.S. government to force Soviet compliance with this provision has undermined the SALT exercise more than any other single factor, even to the extent of making it counterproductive in its effect on U.S. national security.

The highest priority Soviet objective in SALT was to halt the U.S. ABM program, designed to protect the U.S. deterrent capability, while at the same time avoiding any limits on Soviet offensive forces that would hamper efforts to eliminate the deterrent effectiveness of the U.S. Minuteman ICBMs (which constitute half of all U.S. strategic delivery vehicles). They were forced to make a concession on the issue of conversion of light or heavy missiles but successfully fought off all efforts to define a light or heavy missile.[9] This gave the American government an excuse to retreat on this issue when the Soviets began to deploy their SS-17 and SS-19 ICBMs to replace the older SS-11; and the U.S. government took it. The Carter Administration has even gone so far as to declare that the deployment of even the larger missile, the SS-19, is "not a violation" and that we only raised the issue to "emphasize the importance the U.S. attached to the distinction between 'light' and 'heavy' ICBMs . . . ."[10]

Both the SS-17 and SS-19 dwarf the capabilities of the missile they are replacing, but are only 20-60 percent larger in size. The SS-11 Mod I had a throw-weight[11] of 1,500 pounds. Its yield was in the one to two megaton range, probably closer to the lower figure. Then in 1974, Secretary of Defense James Schlesinger told the Congress that the SS-17 carried four MIRVs in the one megaton yield range and the SS-19 carried six similar-yield MIRVs. The throw-weight of the SS-17 and

8. *U.S. Arms Control and Disarmament Agency: Texts and History of Negotiations* (Washington: U.S. Arms Control and Disarmament Agency, 1975) pp. 133-47.

9. Fred Charles Ikle, "What to Hope for, and Worry About, in SALT," *Fortune*, October 1977, p. 182.

10. "Compliance with the SALT I Agreements," p. S2554.

11. Throw-weight is another way of saying missile payload. It is the total weight of the warhead(s) and MIRV system, if any.

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SS-19 is in the 7,000-8,000 pound range. This compares with 13,500 pounds for the *largest* of the heavy ICBMs the Soviets had at the time of SALT I.[12] As Schlesinger testified in 1974, "At the time of SALT I we thought that, if we could get control of the SS-9 or its replacement, we would have a handle on the Soviet throw weight problem. What we were unprepared for was the enormous expansion of Soviet throw weight represented by the SS-X-19 as the potential replacement for the SS-11."[13] That replacement was not supposed to happen under the SALT I agreement.

In 1972 Dr. Henry Kissinger assured us that the conversion of SS-11 silos into heavy missile launchers was prohibited by the agreement despite the lack of a definition of what constituted a heavy missile in the agreement. He assured Congress that:

> Now with respect of the definition of heavy missiles, this was the subject of extensive discussions at Vienna and Helsinki, and finally Moscow. No doubt, one of the reasons for the Soviet reluctance to specify a precise characteristic is because undoubtedly they are planning to modernize within the existing framework some of the weapons they now possess. The agreement specifically permits the modernization of weapons. There are, however, a number of safeguards. First, there is the safeguard that no missile larger than the heaviest missile that now exists can be substituted.

12. Mark B. Schneider, "The Soviet Capability in Strategic Offensive Forces," *Ordnance*, March-April 1973, p. 370; Mark B. Schneider, "SALT and the Strategic Balance: 1974," *Strategic Review*, Fall 1974, p. 43; Paul Nitze, "Consequences of An Agreement" (Washington: Committee on the Present Danger, Mimeo., 1978) p. 2; Mark B. Schneider, "Schlesinger, SALT and the 'Arms Race,' " *Survive*, July-August 1974, p. 10; Dr. William Van Cleave, "SALT On The Eagle's Tail," *Strategic Review*, Spring 1976, p. 50; *The Military Balance 1978-1979* (London: International Institute for Strategic Studies, 1978) p. 81; *Measures and Trends: US and USSR Strategic Force Effectiveness* (Alexandria: Defense Nuclear Agency, March 1978) p. A-1; John M. Collins, *American and Soviet Military Trends Since the Cuban Missile Crisis* (Washington: Georgetown University Press, 1978) p. 120; William Van Cleave, "Soviet Doctrine and Strategy: A Developing American View," in Lawrence L. Whetten, ed., *The Future of Soviet Military Power* (New York: Crane, Russak & Co., 1976) p. 53.

13. Senate Foreign Relations Committee, *U.S.-U.S.S.R. Strategic Policies* (Washington: Government Printing Office, 1974) p. 5.

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> Secondly, there is the provision that the silo configuration cannot be changed in a significant way. . . .
>
> We believe that these two statements, taken in conjunction, give us an adequate safeguard against a substantial substitution of heavy missiles for light missiles. So we think we have adequate safeguards with respect to that issue.[14]

Ambassador Gerard Smith, chief of the SALT I delegation, told the Congress, "There will be a commitment on their part not to build any more of these ICBMs that have concerned us over the years. That commitment will extend to not building such things as SS-9s. . . ." He went on to say, "We have put them on clear notice that any missile having a volume significantly larger than their SS-11, we will consider that as incompatible with the Interim Agreement."[15]

Definition of 'Heavy' Missile

In a quasi-official history of SALT I, commissioned by Henry Kissinger, John Newhouse gave the early Kissinger view of SALT I limitation on light missile conversions. Noting that the agreement had no definition of a heavy missile, Newhouse wrote, "Still, any violation of the spirit of this language, let alone the letter, would probably oblige the United States to withdraw from the agreements. Moscow understands that."[16] Unfortunately, Moscow understood far too well the pliable character of the U.S. leadership and went ahead with their deployment.

Testing of the SS-17 and 19 began just after the signing of SALT I. From our current perspective it would seem that the delay in their testing until after the signing of the agreement was really the first phase of what would become the Soviet SALT concealment and deception effort. The Senate would never have approved the agreements if it had known about the fourth generation Soviet MIRVed ICBMs.

At the time of the signing of SALT I, the U.S. government issued a unilateral statement defining a heavy missile which,

14. Congressional Budget Office, *SALT and the U.S. Strategic Forces Budget* (Washington: Government Printing Office, 1976) pp. 6-8.

15. *Ibid.*, p. 8.

16. John Newhouse, *Cold Dawn* (New York: Prentice Hall, 1973) p. 177.

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as Dr. William Van Cleave, the leading critic of SALT I, pointed out, became an acute embarrassment. The U.S. government defined a heavy ICBM as any one having "a volume significantly greater than the largest light ICBM operationally deployed by either side at the time of the U.S. unilateral statement of May 26, 1972."[17] In 1975 Secretary of Defense James Schlesinger told the Congress that the SS-19 had a volume 50 percent greater than that of the SS-11. A more recent estimate has put this figure at 60 percent.[18]

Kissinger's response was immediate when the SS-19 size became a public issue. He told the press that:

> There are other issues, some having to do with unilateral American statements which the Soviet Union specifically disavowed. I think it is at least open to question whether the United States can hold the Soviet Union responsible for its own statements when the Soviet Union has asserted that it does not accept this interpretation.[19]

What Henry Kissinger was really saying was that the United States cannot hold the Soviet Union to American interpretation of the unclear provisions of SALT. Surprisingly, even some major critics of the SALT I accord have gone along with this line of reasoning, pointing out, with what they consider to be reasonable justification, that Kissinger and other Administration spokesmen actively misled the Congress concerning what exactly had been agreed upon. However, unilateral statements do have international legal significance. For example, article 147 of the American Law Institute's *Restatement of the Foreign Relations Law of the United States* indicates that:

> The factors to be taken into account by way of guidance in the interpretative process include:
>
> . . .
>
> (e) unilateral statements of understanding made by a signatory before the agreement came into effect, to the extent that they were communicated to, or otherwise known to, the other signatory or signatories.

17. "Compliance With the SALT I Agreements," p. S2553.

18. Senate Armed Services Committee, *Soviet Compliance With Certain Provisions of The 1972 SALT I Agreements* (Washington: Government Printing Office, 1975) p. 3; Collins, *American and Soviet Military Trends Since The Cuban Missile Crisis*, p. 110.

19. "The Secretary of State, Press Conference," December 9, 1975 (Washington D.C.: State Department, 1975) p. 5.

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Under international law, treaties are interpreted under the plain meaning rule. Article 31 of the Vienna Convention on The Law of Treaties, May 23, 1969, declares, "A Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its objective and purpose." The plain meaning rule is tempered by the recognition that the intent of the parties should be carried out.[20]

The U.S. intent to ban the deployment of light ICBMs with much increased payload and more destructive potential than the SS-11 was made clear to the Soviets during the SALT talks. The reason for the Soviet refusal to put a definition of "heavy" missile into the agreement was not made clear to the United States. The Soviet Union did not plan a small, say 10, 20 or 30 percent increase of capabilities, but rather a 400 percent increase. A MIRVed SS-11 probably would have carried three warheads of .1 to .15 megaton. The SS-19 carries 6 one megaton MIRVs.[21] Even the SS-17 with its four 1 megaton range MIRVs represents a very significant increase in capabilities.

The SS-11 had about 1/8 of the capabilities of the largest pre-SALT ICBM, the SS-9. The SS-9 has between 60 and 75 percent of the capabilities of the various versions of the SS-9 and its follow-on replacement, the SS-18. With six MIRVs the SS-19 dwarfs the counterforce capability of the pre-SALT SS-9. In the case of the SS-9 Mod I, the first version to be deployed, the area destruction capability is probably no greater than the SS-19. The SS-19 far exceeds capabilities of earlier "heavies." The Chairman of the JCS in a 1975 report to the Congress wrote that "The SS-7 and 8s are both pre-1964 'heavies.'"[22] The SS-7 and 8 have about half the payload of the SS-17 or 19.[23]

In a 1975 press conference, James Schlesinger told his audi-

20. William W. Bishop, Jr., *International Law* (Boston: Little, Brown and Co., 1971) pp. 173-75.

21. Schneider, "The Soviet Capability in Strategic Offensive Forces," pp. 370, 372.

22. *United States Military Posture For FY 1976* (Washington: Government Printing Office, 1975) p. 10.

23. Schneider, "The Soviet Capability in Strategic Offensive Forces," p. 370; *The Military Balance 1977-1978* (London: International Institute for Strategic Studies, 1977) p. 77.

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ence that the SS-17 and 19 "can no longer be treated as light missiles."[24] Recently, in highly censored congressional testimony, the Director of Defense Research and Engineering compared what was evidently the SS-19 and SS-18 with the MX:

> We call the MX a heavy missile; certainly it is relative to the Minuteman III, and yet it is of comparable size to the (deleted) not the (deleted).[25] The MX has a throw-weight of 8,000 pounds which makes it identical to the SS-19 in its destructive potential.[26]

The deployment of the SS-19 would have justified, indeed, should have demanded U.S. abrogation of the SALT accords. Deployment of the SS-17 and 19 with MIRVs resulted in at least a twofold increase in Soviet counter-value and counter-military capability. Under international law this would have justified treaty abrogation on the grounds of major violation.

Instead, the U.S. is legitimizing the SS-17 and 19 deployment in the SALT II agreement. Indeed, the agreement will probably allow the Soviets to upgrade these systems to a 10 warhead configuration. It will also allow the Soviets to deploy several hundred SS-17 and 19 follow-on missiles with single warheads in the 10 to 20 megaton range.[27]

24. "News Conference With Secretary of Defense James Schlesinger and Dr. Fred C. Ikle, Director, Arms Control and Disarmament Agency" (Washington: Defense Department, 1974) p. 12.

25. Senate Armed Services Committee, *Department of Defense Authorization For Fiscal Year 1979* (Washington: Government Printing Office, 1978) p. 1406.

26. Colin S. Gray, "The Strategic Forces Triad: End of the Road?" *Foreign Affairs*, July 1978, p. 785.

27. Bernard Gwertzman, "Carter, Key Aides Confer on Eve of Gromyko Visit," *Washington Star*, September 30, 1978, p. A-6.

Based on the record of Soviet SALT I compliance, it is reasonable to predict that the Soviets will violate SALT II in a manner similar to SALT I violations. They will get around the Protocol limitations by calling their fifth generation ICBMs improved fourth generation. They will cheat on the edges of the agreement. They certainly know that there are major problems in estimating missile throw-weight and some margin of uncertainty exists. They also know the U.S. government bends over backwards to rationalize their violations. They almost certainly could get away with a 10,000 pound throw-weight for the next generation of ICBMs. This would make them heavy ICBMs beyond any shadow of a doubt.

The extra throw-weight would be devoted to increasing the yield of the warheads or more likely a combination of additional yield and

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It is important to note that Secretary of Defense Harold Brown in his first posture statement told the Congress that "We believe that the SS-19, because of its combination of accuracy and yield, though with fewer reentry vehicles than the SS-18, is currently the most capable of the three newer missiles." Recently *Aviation Week* has reported the testing of improved SS-18 and SS-19 ICBMs with accuracies comparable to the best the U.S. has achieved.[28] This, combined with their far larger warheads, gives them much greater counterforce capability than U.S. ICBMs and will create a very near term threat to the survivability of the U.S. ICBM force. Much of this threat has developed because the U.S. allowed the deployment of the SS-19 in violation of SALT I.

SALT II should have been devoted to the elimination of the SS-18 and the establishment of strategic parity at a much reduced offensive level. Instead, all that can be claimed for SALT II is that it *may* limit the Soviets to a severalfold increase in the already lopsided margin or superiority they obtained in SALT I. There is simply no doubt that the Soviet Union can build under the SALT II limits an offensive component of a war-winning strategic capability, unless the U.S. undertakes much more vigorous programs than now envisioned.

The fact that the Soviets had deployed the SS-19 was used as an excuse by the U.S. government to justify the retreat from the position in the early days of the Carter Administration that SALT II had to result in a reduction in the Soviet heavy ICBM force. In effect, the SALT exercise, because of the SS-17 and 19 deployment, has become a charade.

Dismantling ICBMs

When the Soviet SLBM force was expanded beyond 740 in late 1975 the Soviets, under the Interim Agreement Protocol, had to begin the dismantling of older ICBMs when the new SSBNs went on sea trials and to complete the dismantling

targeting flexibility. The Soviets might be able to deploy 10 RVs and yet keep the yield up to a good fraction of a megaton.

28. Harold Brown, *Department of Defense Annual Report Fiscal Year 1979* (Washington: Government Printing Office, 1978) p. 50; Clarence A. Robinson, Jr. "Soviets Boost ICBM Accuracy," *Aviation Week and Space Technology*, April 9, 1978, p. 14; Robert L. Leggett, "Two Legs Do Not a Centipede Make," *Armed Forces Journal International*, February 1975, p. 30.

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within four months. This is the only provision of the SALT accords the U.S. government will admit that the Soviets violated.

This was dismissed by the State Department as a mere "technical violation." Rather than view this as the illegal deployment of modern SLBMs, the State Department presented it as a failure to dismantle obsolete weapons. Cyrus Vance reports that the Soviets admitted that they had failed to dismantle 41 ICBMs on time in 1976. He goes on to state that "Since that time, although we have observed some minor procedural discrepancies at a number of those deactivated launch sites, all the launchers have been in a condition that satisfied the essential substantive requirements, which are that they cannot be used to launch missiles, and cannot be reactivated in a short time."[29]

This statement suggests calculated deception by the Carter Administration. One must ask why the Carter Administration abandoned the policy followed by every Administration for twelve years — releasing the exact number of Soviet ICBMs and SLBMs. The number released by Secretary Brown in 1978 was 1,400+ and 900+ respectively for Soviet ICBMs and SLBMs.[30] Perhaps the reason is that the actual numbers added up to significantly more than what is allowed under SALT and, for the first time, this would be obvious to the reader. If so, the American government acquiesced to a major Soviet SALT violation for over two years.

Why did the Soviets do this? By 1976 they had gotten away with numerous SALT violations and quasi-violations for a couple of years. In an article published in November 1975, Dr. Colin Gray was able to catalogue a dozen specific violations or possible violations of SALT I.[31] It was also an election year in 1976, and the Soviets knew the Administration would not do anything to upset the apple cart of

29. Bernard Gwertzman, "Soviets Promise to Rectify Violation of '72 SALT Pact," *Washington Star*, May 25, 1976, p. A-4; "Compliance With The SALT I Agreement," p. S2555.

30. Brown, *Department of Defense Annual Report Fiscal Year 1979*, p. 47; Dr. Colin S. Gray, "SALT I Aftermath: Have the Soviets Been Cheating?" *Air Force Magazine*, November 1975, pp. 28-33.

31. *Soviet Compliance With Certain Provisions of the 1972 SALT I Agreements*, p. 20; and "Compliance With the SALT I Agreements," p. S2554.

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detente. The opposition was even more committed to SALT than the Kissinger-Ford team was during that period. Why then invest manpower and resources to dismantle weapons when they could be used to build them?[32]

The Soviet Union has for a number of years been building 150 silos which they claim are for launch-control purposes (which contain a launch crew and associated equipment). This silo, the type III-X, can rapidly be converted into a launcher for a heavy ICBM. The U.S. government has accepted their deployment on the grounds that they are currently used for launch-control purposes.[33]

The current use of the silos is irrelevant. They are basically incompatible with a SALT environment. There is no reason to build them. Silos are inherently inferior to the conventional buried type of launch-control center in terms of hardness. In addition, even if the silo survives, the launch crew would receive a large dose of radiation which it would not get in a conventional buried installation. Acceptance of the Soviet activity position was clearly an act of weakness on the part of the U.S. government.

There have been other charges in the press concerning silo-related SALT violations that the Carter Administration has chosen to ignore. The reports include the illegal construction of some additional ICBM silos. Admiral Zumwalt and Worth Bagley report that the Soviets have violated that 15 percent limitation on silo size increases in the Interim Agreement. Despite the "common understanding" on this issue, the Soviets have interpreted the 15 percent limitation to apply to all dimensions, allowing a 50 percent increase in the size of the silos.[34]

32. The Soviets retaliated by questioning U.S. dismantling of Atlas and Titan I missiles which had been completed six years before SALT I. There was no requirement under the SALT agreement to dismantle any U.S. silos, because we have not gone above the Interim Agreement limit on SLBMs – we have not built any since 1967. There seems to be a pattern in the raising of such spurious claims by the Soviets. They seem to be used to cover Soviet violations. We will return to this issue again.

33. *Soviet Compliance With Certain Provisions of the 1972 SALT I Agreements*, p. 20.

34. Gray, "SALT I Aftermath," p. 31; Elmo R. Zumwalt, Jr. and Worth Bagley, "Soviets Cheat, and We Turn Our Backs," *Washington Star*, August 10, 1975, p. C-4; Van Cleave, "Salt On the Eagle's Tail," p. 51.

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What about 18 "operational test" silos for the SS-9? The Soviets did not tell us about them at the time of SALT.

The issue of the deployment of the SS-16 and SS-20 will be discussed in the section on concealment and deception. The SS-16, if deployed, would be a violation of the U.S. unilateral statement on mobile ICBMs. While there have been reports that the range of the SS-20 is long enough to qualify it as an ICBM by the SALT definition, the real threat of the system is that it can be clandestinely upgraded from IRBM to ICBM.

Compared to the strategic consequence of the SS-17 and SS-19 deployment, the SS-16/20 issue is minor but it could represent the clandestine deployment of an entire new leg of the Soviet deterrent. It is not an isolated issue and must be put into perspective with the other Soviet activities in the offensive and defensive systems area.

The ABM Treaty

The ABM Treaty provided that "Each party undertakes not to deploy ABM systems for a defense of the territory of its country and not to provide a base for such defense, and not to deploy ABM systems for defense of an individual region except as provided for in Article III of this Treaty."[35] Article III provided for the deployment of an ABM system at the national capital with one hundred interceptor missiles and six radar sites. Another complex could be located in an ICBM silo field. It was limited to two large-phase array radars, eighteen smaller radars and one hundred interceptor missiles. Sea, air, space and mobile land-based ABM systems were banned as were automatic and semi-automatic launchers for ABM missiles. A provision was included to prohibit the transfer of ABM systems or components to other countries. Radars for early warning of ballistic missile attack were to be located along the periphery of the nation and oriented outward. The Treaty included an undertaking not to give air defense missiles and radars any ABM capability. Interference with national technical means of verification was prohibited and a Standing

35. *Arms Control and Disarmament Agreements: Texts and History of Negotiations* (Washington: U.S. Arms Control and Disarmament Agency, 1975) pp. 133-47.

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Consultative Commission was established to consider compliance issues.

The Soviet Union is very clearly violating a number of the provisions of the ABM Treaty. The evidence at this point is at least consistent with an interpretation that the Soviets are right now in the process of deploying a nationwide ABM system.

The ABM Treaty of 1972, as modified by the 1974 agreement, limits the construction of battle management radars except at Moscow.

The Carter Administration has refused to address the issue of the construction of prohibited radar capabilities. We have had reports from other sources. The *Washington Star* has reported that:

> The Soviets have built a number of high power radars along northern missile routes from the United States that could provide precision information on missiles at ranges of 1,000 to 2,000 miles. These radars, 400 feet high and 600 to 700 feet wide, use the latest technology called "phase array."[36]

These new radars could be the basis of a nationwide ABM system. They are the long lead time component. They could be used either with the rapidly deployable ABM-X-3 system or as part of a Surface-to-Air Missile (SAM) upgrade effort.[37] They could even be used to deploy a nationwide area defense composed of long range interceptors that would not require the Soviets to deploy engagement radars and could be deployed clandestinely.

The threat of a rapidly deployable ABM has been intensified by the Soviet development of a high acceleration ABM interceptor and a tactical ABM system.[38] Hence, we face a range of potential ABM threats from the rudimentary to the very

36. Henry S. Bradsher, "Soviet ABM Defense Stepup Has Pentagon Concerned," *Washington Star*, February 16, 1977, p. 1; and Jack F. Kemp, "Congressional Expectations of SALT II," *Strategic Review*, Winter 1979.

37. The ABM-X-3 uses a small phase array radar. *Department of Defense Authorization For Appropriations For Fiscal Year 1979*, p. 6526.

38. Bradsher, "Soviet ABM Defense Stepup Has Pentagon Concerned," p. 1; *Is America Becoming Number 2?*, p. 16.

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sophisticated, all of which can be deployed prior to any effective U.S. counteraction due to the apparent U.S. acceptance of the new Soviet radar construction.

The Kamchatka Radar Deployment

In 1975 the Soviets installed an ABM-X-3 radar in the Kamchatka impact area for their ICBM testing. Unless this was an ABM test range in 1972, the deployment violates the ABM Treaty. The U.S. provided the Soviets with a list of ABM test ranges and Kamchatka was not on it. The Soviets did not confirm or deny the list.[39]

The deployment of the ABM-X-3 radar on Kamchatka can be deemed to be a double violation of the agreement. The United States told the Soviet Union that we regarded any radar that was "not permanently fixed" to be a violation of the ABM Treaty provision against mobile radars. The Soviets replied that there was "a general common understanding on this matter."[40]

The Carter Administration is arguing that "The USSR does not have a mobile ABM system or components of such a system." It does admit that:

> Since 1971, the Soviets have installed at ABM test ranges several radar associated with an ABM system currently in development. One of the types of radars associated with this system can be erected in a matter of months, rather than requiring years to build as has been the case for ABM radars both sides have deployed in the past. Another type could be emplaced on prepared concrete foundations. This new system and its components can be installed more rapidly than previous ABM systems, but they are clearly not mobile in the sense of being able to be moved about readily or hidden. A single complete operational site would take about half a year to construct. A nationwide ABM system based on this new system would take a matter of a year to build.[41]

Note how this State Department report defined away the problem by ignoring the fact that there was agreement in 1972

39. "Compliance with the SALT I Agreements," p. S2556.
40. *Arms Control and Disarmament Agreements*, p. 145.
41. "Compliance with the SALT I Agreements," p. S2556.

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that all ABM radars be permanently fixed. Moreover, the suggestion that we keep track of every concrete foundation built in the Soviet Union, or that it is difficult to hide a small radar, is spurious.

The ABM-X-3 radar is at least a semi-mobile system.[42] It can be clandestinely deployed and, for all we know, this could be going on right now.

The Soviet Union is apparently upgrading many of its Surface-to-Air (SAM) bomber defense missiles to ABM capability. Only a single one of the reported instances of SAM upgrade activities was reported in the recent report on SALT violations by Cyrus Vance – the testing of the SA-5 radar against strategic ballistic missile warheads.[43]

The Carter Administration's explanation was that it might have been used in a legitimate range instrumentation role and that, in any event, more testing would be required to give it an ABM capability. Indeed, "Extensive and observable modifications to other components of the system would have been necessary, but have not occurred." The Soviets denied that the radar was being tested in the ABM mode and terminated the testing.[44]

The testing of the SA-5 radar in an ABM mode is a far more significant violation than the Administration will admit. Mr. Vance neglected to inform the Congress that the SA-2 and SA-5 interceptor missiles have been tested many times by the Soviets at altitudes above 100,000 feet – clearly in an ABM mode. Melvin Laird has recently confirmed the many reports of this activity that have appeared in the press. Laird related that thousands of SA-5 interceptors have been deployed around 110 Soviet urban areas, and with appropriate radars and computers they could have a significant ABM capability. The SA-5 interceptor can intercept targets up to 150,000 feet at ranges of over 100nm. Its acceleration is slow, which limits dramatically its effectiveness against advanced penetration aid packages, but we will *not* have many of the forces with adequate penetrat-

42. Clarence A. Robinson, Jr., "Further Violations of SALT Seen," *Aviation Week and Space Technology*, February 3, 1975, p. 12; and Van Cleave, "SALT On The Eagle's Tail," p. 50; *Is America Becoming Number 2?*, p. 16.

43. Melvin R. Laird, "Arms Control: The Russians Are Cheating!" *Readers Digest*, December 1977, p. 99.

44. *Ibid.*

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ing capability to survive a Soviet surprise attack in the early 1980s.[45]

As for the termination of Soviet testing of the SA-5 radar in the ABM mode, Admiral Zumwalt points out that "No one can be sure that the Soviets haven't by that cheating, already learned what they need to know."[46]

There have even been reports that the Soviets have been testing SAM missiles "against actual or simulated ballistic missile re-entry vehicles."[47] This is another issue that Mr. Vance successfully evaded in his report to Congress. If true, the Soviets could have at least a limited nationwide ABM capability today in violation of the SALT accords.

The suggestion by Secretary Vance that "extensive and observable" modifications of the system would be necessary for SAM upgrade is a deliberate distortion by the State Department. If the radar has been proven against missile RV, only improved computers and a nuclear warhead (if the system doesn't already have one) would be required to detect, track and destroy missile warheads. Reconnaissance satellites are not going to detect such minor modifications.

Even prior to the SAM upgrade testing after 1973, the U.S. military was far less sanguine than the State Department concerning the performance of the SA-5. In 1971 General Holloway, Commander of the Strategic Air Command, told the Congress that "with predicted intercept data from remote ABM radars, it could defend large areas of the Soviet Union against missile attack."[48] A year later he informed the Congress

45. There are no U.S. penetration aids on Poseidon. Any Poseidon RV that can be tracked by a SA-5 radar can be destroyed by a SA-5 interceptor. All U.S. penetration aids, chaff packages, are on Minutemen ICBMs which the Soviets will be able to eliminate by the early 1980s largely because they deployed the SS-19 in violation of the SALT I agreement.

46. Gray, "SALT I Aftermath," p. 30; and Van Cleave, "SALT on the Eagle's Tail," p. 50; Tad Szulc, "Soviet Violations of the SALT Deal—Have We Been Had?" *New Republic*, June 7, 1975, p. 15; Laird, "Arms Control: The Russians Are Cheating!" p. 99; Bradsher, "Soviet ABM Defense Stepup Has Pentagon Concerned," p. 1; Johan J. Holst, "Missile Defense, The Soviet Union and the Arms Race," in Johan J. Holst and William Schneider, Jr., *Why ABM? – Policy Issues in Missile Defense Controversy* (New York: Pergamon Press, 1969) pp. 150-51.

47. Van Cleave, "SALT on the Eagle's Tail," p. 50.

48. House Armed Services Committee, *Hearings on Military Posture* (Washington: Government Printing Office, 1971) p. 2909.

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that ". . . I must treat it as an ABM. It is prudent to do so in our war planning, and the penalty for failure to suppress it as an ABM would be greater than the cost to negate it which we now plan to expend. My handling of the SA-5 in this sense is concurred in by the intelligence community."[49]

Unfortunately, the best weapon General Holloway could have used in the early 1970s to suppress the SA-5, the U.S. Minuteman III, will no longer be survivable in the 1980s, largely due to the SS-19 deployment.

The Soviets are apparently developing a tactical ABM system using a phased array radar and high acceleration interceptor. Unlike the advanced SAMs the Soviets have under development (which would have ABM potential significantly above the SA-5),[50] the new tactical ABM would be specifically designed to intercept ballistic missile warheads. The only difference between it and a strategic ABM would be that its components would probably be somewhat smaller. Such a system would certainly have a substantial capability against most if not all types of strategic missile warheads, probably even those with advanced penetration aids.

What is most disturbing about the new tactical ABM is that it could be produced by the thousands for tactical forces, and vast numbers could be clandestinely deployed for strategic purposes. It would have more capability in this area than the rapidly deployable ABM-X-3. The tactical ABM, by its very nature, would have to be a highly mobile system. To function at all in such a demanding role as tactical missile defense, it would have to be field-deployable in a matter of hours.

Not surprisingly, this is another issue that Mr. Vance did not deem important enough to address.

Individually, it is possible to rationalize the specific actions of the Soviet Union in the ABM area but they form a clear pattern of activity which seems aimed at a major Soviet operational ABM capability in the early to mid-1980s. Even before the construction of the new phased array radars, the Soviets

49. Senate Armed Services Committee, *Fiscal Year 1972 Authorization For Military Procurement, Research and Development, Construction And Real Estate Acquisition For The Safeguard ABM, And Reserve Strength* (Washington: Government Printing Office, 1971) p. 1693.

50. Bradsher, "Soviet ABM Stepup Has Pentagon Concerned," p. 1; *Is America Becoming Number 2?*, p. 16.

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had enormous early warning and ABM augmentation capability in the large network of Hen House radars that have been built.[51] The only rational purpose for these new multi-billion dollar radars is the precise tracking necessary to launch ABM interceptors.[52]

The illegal Soviet ABM program with its emphasis on rapidly deployable systems and high technology interceptors combined with the SAM upgrade activities and the development of an anti-tactical ballistic missile system clearly point to a Soviet decision to furtively and incrementally deploy a major ABM capability.

Concealment and Deception Activities

In SALT I, the Soviet Union agreed to non-interference with "national technical means of verification." It is very clear that this provision was intended to ban changes in procedures designed to deny the other side verification information. Indeed, the Treaty provides that "Each party undertakes not to use deliberate concealment measures which impede verification by national technical means of compliance with this Treaty."[53]

The report by Secretary Vance confirms reports of large scale concealment and deception activities. While these activities peaked in 1974, they continue to occur. The Administration justifies this failure to enforce one of the most important SALT provisions with the assertion that the Soviet activities did not prevent verification of the ABM treaty provisions and that we were only concerned about future verification if the pattern of concealment continued to expand. Secretary Vance tells us not that the violations have ceased since 1975, but that "there no longer appeared to be an expanding pattern of

51. Mark B. Schneider, "Russia and the ABM," *Ordnance*, March-April 1972, pp. 372-74.

52. The Soviet protests in the SCC of clearly legitimate U.S. early warning radar construction activity are clearly designed to give legitimacy to the new Soviet radars and tend to give support for the reports of their deployment which the Carter Administration will not confirm. The new Soviet radars are an acute embarrassment to the Administration because a 1972 U.S. unilateral statement put the Soviets on notice that even the far more primitive Hen House radars were regarded as having a significant ABM potential.

53. *Arms Control and Disarmament Agreements*, p. 135, 148.

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concealment activities associated with strategic weapons programs."[54] Hence, the Soviets can continue to cheat as long as the cheating (we believe) doesn't prevent our verification. Just how we are expected to know how much the Soviet concealment programs are preventing us from seeing is not explained. Only a few of the Soviet concealment and deception actions are listed in the report and it attempts to give an impression that they are isolated actions, not large scale deception activity.

The only concealment activities reported by Vance were:

- "In early 1977, we observed the use of a large net covering over an ICBM test launcher undergoing conversion at a test range in the U.S.S.R."
- encoding of missile telemetry.[55]

On the encoding or encryption of the telemetry issue the report presents the same dubious rationale as it does for the other SALT violations – it is not a violation because it is not successful in denying us information.[56] A more reasonable assessment of the encryption problem was presented by Tad Szulc:

> Soviet interference with United States measurements by telemetry of Russian MIRV testing may be the most serious SALT violation, particularly in the light of last November's tentative agreement between Brezhnev and Ford in Vladivostok that for the first time added MIRVed vehicles to the limitation of strategic arms.[57]

Instead of mentioning only the single instance of concealment at the test ranges announced by Mr. Vance, James Schlesinger spoke of concealment "activities" in 1975. Among the activities that have been reported in the press but neglected by Mr. Vance are:

- Concealment activities in the shipyards. Placing large canvas covers over missile submarine construction and refit facilities at Severomorsk.
- Large scale use of large canvas covers over missile silo doors and other facilities.
- Testing of decoy submarines.

54. "Compliance With The SALT I Agreements," p. S2554.
55. "Compliance With The SALT I Agreements," pp. S2555-6.
56. *Ibid.*
57. Szulc, "Soviet Violations of the SALT Deal," pp. 14-15.

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– Large scale concealment activities related to the deployment of the SS-16/20 missiles.[58]

The possible Soviet concealment of the deployment of the SS-16 and SS-20 is perhaps the most important of the concealment activities because there is a significant possibility that the SS-16 has been clandestinely deployed in a mobile mode by the Soviet Union.[59] The other great object of Soviet concealment activities, the SS-20, is operational today.

The SS-20 may have a range as long as 3,100 nautical miles with its three MIRV warheads. With a single warhead this might be upgraded to 4,000 miles, making it a minimum range ICBM.[60] Even at a range of 3,100 miles it would be classified as an ICBM under the SALT definition (which is 5,500 km) and, hence, would be a violation of the U.S. unilateral statement on mobile ICBM deployment.

More significant is the fact that the SS-20 can easily be upgraded into an SS-16. The Chairman of the Joint Chiefs of Staff related in early 1978 that

> The SS-20 comprises the first two stages of the three-stage SS-16. By upgrading SS-20 deployment to the SS-16, the Soviets would increase their mobile ICBM capability relatively quickly. This could be accomplished by the addition of a third stage to the two SS-20 stages. Such action could significantly increase the number of ICBMs in Soviet intercontinental forces.[61]

What is so serious about the SS-20 upgrade threat is the fact that the Soviets plan deployment of at least 1,000 of them.[62] This is an action so basically incompatible with the SALT environment that, alone, it could justify treaty abroga-

58. Gray, "SALT I Aftermath," p. 31; and Szulc, "Soviet Violations of the SALT Deal," p. 14; *Soviet Compliance With Certain Provisions of the 1972 SALT I Agreements*, p. 3.

59. Francis P. Hoeber, "Strategic Forces," in William Schneider, Jr., and Francis P. Hoeber, *Arms, Men and Military Budgets* (New York: Crane, Russak & Company, 1976) p. 29; Zumwalt and Bagley, "Soviets Cheat, and We Turn Our Backs," p. C-4.

60. Clarence A. Robinson, "Another SALT Violation Spotted," *Aviation Week and Space Technology*, May 31, 1976, p. 12.

61. *United States Military Posture For FY 1979*, p. 25.

62. Joseph D. Douglass, Jr., *A Soviet Selective Targeting Strategy Toward Europe* (Arlington: System Planning Corporation, 1977) p. 35; and Donald H. Rumsfeld, *Annual Defense Department Report FY 1978* (Defense Department, 1977) p. 62.

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tion. Instead, we accept it as we have accepted the SS-19 and the launch control silos.

Too much is sometimes made of the fact that the SALT I accords were bad agreements negotiated for the worst of reasons (domestic political advantage for an insecure chief executive). International agreements often have to be vague and leave many important terms undefined. This does not excuse the spinelessness with which the American government has enforced the terms of the SALT accord. Despite all their deficiencies, the SALT I agreements could have worked if the Soviet government had been held to a reasonable interpretation of them. Instead, we have been increasingly sold the line that the process of SALT-detente is so important that we should ignore the end results.

If the SALT mentality currently prevalent in the U.S. government is not reversed we will continue to get 7 percent solutions to 300 and 400 percent problems — agreements that force minor cutbacks in some areas while allowing major expansions of Soviet capability in the critical areas. The rationale now being presented for SALT II is roughly analogous to arguing that one should voluntarily accept an injection of a lethal substance because if we refuse it we may face the prospect of coming into contact with a somewhat larger dose.

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On the Freedom and Responsibility of the Press

VERMONT ROYSTER

When I first came to Washington as a fledgling journalist forty-two years ago, the Washington press corps, in total, numbered only a few hundred and you could know almost all of them by sight. There was no radio and television press gallery, not even a gallery to accommodate the periodical press. Today I am stunned by the number of pages it takes in the *Congressional Directory* to list the accredited press in all its forms; I refuse to use that word "media."

That was not all that was different. I well remember my first Presidential press conference. For the record, the date was Friday, May 15, 1936, and Franklin D. Roosevelt was holding his 295th press conference since he had become President.

I presented my shiny new press credentials to the guard at the Pennsylvania Avenue gate, walked up the winding driveway and entered the West Wing of the White House. To the left of the room was a modest office for Steve Early, the President's press secretary. Beyond and out of sight were offices for Marvin McIntyre, the President's only other regular aide, and for Missy Le Hand, his private secretary. There were two others, designated as executive clerks. And that was all — the entire White House staff. The press conference itself was held in the Oval Office. When the door opened, we gathered around the President's desk, no more than twenty of us. There were some desultory questions; I remember being overcome at being a few feet away from the President, at being one of the little band entitled to this privilege.

Press conferences of cabinet officials were equally informal. The Agriculture Department was my first beat and usually only four or five of us would meet with Henry Wallace in his office. There were no microphones, no snaking cables for lights and television cameras. It was no different with Henry Morgenthau or Harold Ickes or Cordell Hull.

In those days all the major government departments were within easy walking distance — Agriculture, Treasury, State, the White House, even War and Navy — and, since *The Wall Street Journal* office was then equally informally organized,

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I would often wander to other press conferences, not because journalistic duty demanded it but simply because it was fun and helped give a feel for the whole of government.

The working rules for press conferences were, by and large, those applied by the President. In general we could paraphrase what he said but could use no direct quotes without express permission. He could also give us information "for background only" which we could make use of but not attribute to him. And he kept the privilege of going "off the record" entirely when he chose.

I do not need to tell you how different it is today. That old State Department building has become the Executive Office Building, and it houses more staff aides to the President than, in those olden days, there were members of the press corps.

Presidential press conferences are now TV events. The last one I attended was in the time of Gerald Ford, and I swore I would never attend another. Unless you want to get your face on television, there's not much point to it.

Press conferences of cabinet officers and other high government officials are also now staged with almost equal panoply.

Though I am reluctant to admit it, there are some gains in the way the new technology has altered the manner of doing things. The ordinary citizen today does get a chance to see the President in action and doubtless to form impressions not just by what the President says but by his style. His grace under pressure, or his lack of it, is not wholly irrelevant to his performance as our national leader.

The same is true, of course, of others in the public arena — a Secretary of State speaking on some matter of foreign policy, an economic adviser testifying before a congressional committee. Even a ten-second snippet on the evening news tells us something about the person, and that too is not irrelevant to his public performance.

But I am not persuaded that the technological changes are all for the better. President Roosevelt could, and often did, just think out loud without fear that every word was put indelibly on the record. He could share with the reporters around his desk some information that would help them to do their jobs better, help them understand what was involved in some public question. He could, and sometimes did, misstate himself at first expression, as everyone may do in casual conversation, and then on second thought rephrase his remarks.

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The modern President has no such latitude. He must live in constant fear of the slip-of-the-tongue. A misstated name from a lapse of memory can be an embarassment. Awkward phraseology on some matter of public import is beyond recall or correction; it is flashed around the world irretrievably.

One consequence of this, it seems to me, is that Presidents today try to say no more at a press conference than what might be put as well in a carefully drafted statement. The loss here is both to the President and to the press.

Increasingly Formal Press Conferences

The President has lost an opportunity to be frank and open. The press has lost an opportunity to share his thought processes which, without being the stuff of tomorrow's headlines, nonetheless could help reporters on their own to do a better job of informing their readers and listeners.

I might add, by the way, that the President has also lost the opportunity to deal bluntly with the stupid question, not unknown at a Presidential press conference. Anyway, I cannot imagine President Carter telling a reporter on television that he had asked a silly question and to go stand in the dunce corner, something President Roosevelt didn't hesitate to do.

So much for the changes wrought by technology, with their advantages and disadvantages. There are also, I think, more subtle differences in the relationship between the press and government as it was and as it is. The surface differences encapsule more profound changes — in our government, in our craft, and not least in the role this journalistic craft plays in the society in which we live.

I have heard it said that the old relationship between the Washington press corps and the government was too "cozy." The implication is that we were "taken in" by the informality of, let us say, Mr. Roosevelt's press conferences or the more casual relationship between the few regulars around a cabinet officer; that we were too flattered at being admitted as at least semi-insiders, too easily accepting the off-the-record conversation; that all this somehow intimidated us from doing our job.

I don't believe it. The competitive instinct among reporters then was no less than now. On my first beat, Agriculture, Felix Belair of *The New York Times* knocked naivete out of me in a hurry and he never seemed to be intimidated by Henry

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Wallace. I never noticed Eddie Folliard of *The Post*, Turner Catledge of *The Times* or Harrison Salisbury of the UP passing up a good story out of deference to authority.

Investigative reporting isn't new, either. It was the press that exposed the Teapot Dome scandal. In my time — for one example — Tom Stokes of Scripps-Howard won his Pulitzer for exposing graft and corruption in the WPA. The defeat of FDR's court-packing scheme was due to the spotlight the press kept on it.

But there was one thing about the press then, I think, which was different from today. We did not think of ourselves and the government as enemies.

We were cynical about much in government, yes. We were skeptical about many government programs, yes. We thought ourselves the watchdogs of government, yes. We delighted in exposes of bungling and corruption, yes. But enemies of government? No.

In any event I don't recall hearing much in those days about the "adversary relationship" between press and government. Today I hear the phrase everywhere.

It reflects an attitude that shows in many ways. At these new-style press conferences, including those of the President, the questions often seem less designed to elicit information than to entrap. Even the daily press briefings by Jody Powell have become a sort of duel, an encounter that would have astonished Steve Early and the old White House press regulars.

There appears to be a widespread view that here on one side are we, the press, and over there on the other side are government officials, none of whom can be trusted.

I suppose it's a result of Watergate. We blame everything now on Watergate — much as the Chinese blame everything on the Gang of Four. But it is, I must confess, an attitude that leaves me uneasy.

Under our Constitution the three official Estates of the realm are the executive, the legislature and the judiciary. Each has a different role and sometimes they disagree, one with another, about what is proper public policy. But no one supposes that because a President may differ with Congress on a particular matter that they are "enemies" by nature or that the Supreme Court is an adversary of both. Unless each gives the others a full measure of respect, our society will dissolve into anarchy.

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The press is not an institution of government. But it is most definitely an institution of our society, made so by the First Amendment to our Constitution. It is not too much to say, I think, that one intent of the First Amendment was to make the press, collectively, a part of the system of checks and balances that helps preserve a free society.

A Fourth Estate of the Realm

That is, in Macaulay's felicitous phrase, we in the press constitute a Fourth Estate of the realm. But that very phrase, "Fourth Estate," implies that we are part of the self-governing process of our society, not something set apart from it.

As such we are permitted — nay, invited — to inform the people what the other Estates are doing and upon occasion to criticize what they are doing. In that last respect, of course, our right is not different from that of other citizens, all of whom are free to speak their minds. We differ from other citizens only in the fact that watching government perform is our full-time occupation.

But that role, or so it seems to me, is not the same thing as casting ourselves as adversaries, enemies even, of government as government. There's a distinction, and an important one, between differing with *a* President in some editorial or commentary and being an adversary of *the* Presidency.

To think ourselves adversaries of government as government makes me uneasy for several reasons. For one, if the press collectively thinks of itself as an adversary of government, why would not the government begin to think of itself as an adversary to the press?

We have, in fact, already seen some signs of that. Some of us have been spied upon — our mail opened, our telephones tapped — as if we were agents of some hostile power. Some of us have been hauled into court and thrown into jail.

The reminder here is that in polity, as in physics, every action creates a reaction. We have in turn reacted to this harassment, as well we should. We ought to cry alarm whenever the government, whether the executive or the judiciary, seems bent on intimidating us by harassment. But we ought also, so I think, take care that we in our turn do not overreact.

We should, with all the energy that is in us, defend the rights of all citizens against executive spying. When citizens cannot write to one another freely or speak to one another without

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fear, then all liberty is endangered.

We should demand for all citizens due process against unwarranted searches and seizures of their private papers. We should hold both the executive and the judiciary strictly accountable that the right of the people to be secure in their persons, their houses, papers and effects be not violated.

We should insist that no warrants, or subpoenas, be issued against any citizen except upon probable cause; warrants should be duly supported before the courts and particular in describing why and what is to be seized.

We should be zealous in our protection of all citizens in their right to a public trial by an impartial jury. That means we should take care that nothing we do prejudices the minds of those who will be called to give judgment on a person accused. That also means, surely, that we should uphold the right of an accused to obtain witnesses in his favor — by compulsory process, if need be, as the Constitution provides.

We should remember that the First Amendment protects the freedom of speech of all citizens, not just our own voices. That is where we should stand our ground, defending the rights of all. Beyond that we should be wary. We should be especially wary of claiming for ourselves alone any exemption from the obligations of all citizens, including the obligation to bear witness in our courts once due process has been observed.

The risk, if we do, is that someday the people may come to think us arrogant. For there is nothing in any part of the Bill of Rights, including the First Amendment, that makes us a privileged class apart.

And it cannot be said too often: freedom of the press is not some immutable right handed down to Moses on Mt. Sinai. It is a political right granted by the people in a political document, and what the people grant they can, if they ever choose, take away.

Freedom of the Press: A Precious Right

But what a precious right it is that they have granted us.

So long as the First Amendment stands, the American press, each part choosing what it will, can publish what it will. When we think it necessary to the public weal we can seize upon documents taken from government archives and broadcast them to the world. We can strip privacy from the councils of state and from grand juries. We are free to heap criticism

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not only upon our elected governors but upon all whom chance has made an object of public attention. We can, if we wish, publish even the lascivious and the sadistic. And we can advance any opinion on any subject.

This is unique among the nations of the world. In what other country is the press so free? Even in England, which is the wellspring of our liberties, there remain, after two hundred years, limits upon the freedom of the press.

Only in America are the boundaries of that freedom so broad. That is why I cherish it and pray the people will never think we abuse it. For there is no liberty that cannot be abused and none that cannot be lost.

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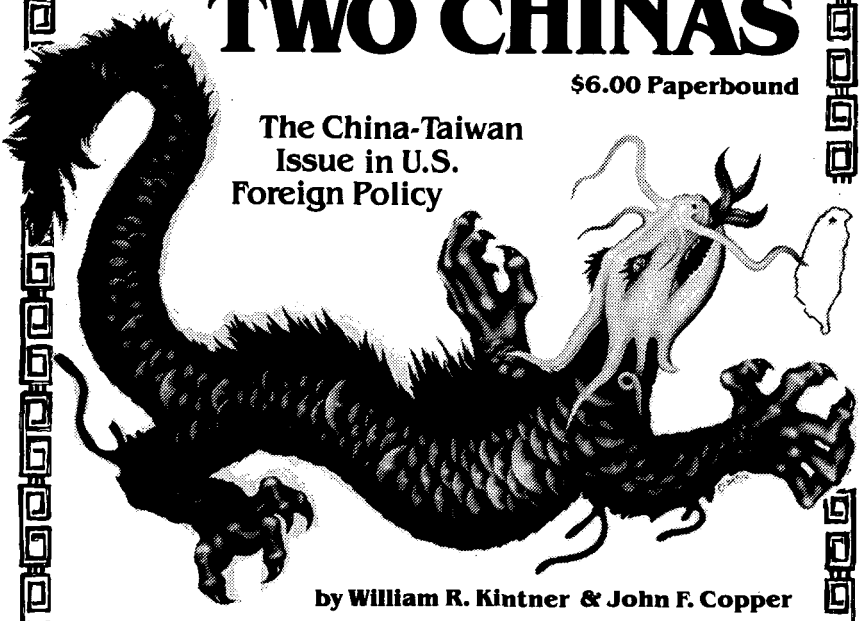

by William R. Kintner & John F. Copper

On December 15, 1978, President Carter announced a new policy: diplomatic recognition of the People's Republic of China and de-recognition of the Republic of China. By linking recognition with America's abrogation of the U.S.-Taiwan defense treaty, the authors argue, the United States committed a serious error, violating the first rule of diplomacy—don't give something away without getting something in return. In this deft analysis of America's China policy, Professors Kintner and Copper discuss the political and moral implications of the new policy and show how the United States can still salvage some credibility and reassure its allies.

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A National Policy To Combat Terrorism

DARRELL M. TRENT

No nation today is immune to terrorism. Contemporary terrorists are not a discriminating lot; they are apt to strike wherever violence will draw attention to their "cause." Demoniacal acts may be carried out in a country that has no conceivable connection with the furies that gave rise to them. Undaunted by national boundaries, terrorists are less likely to view them as hindrances than as promising means of escape or as thresholds to safe havens.

The degree of sophistication of the modern terrorist has created a new range of problems that must be considered by every country. Transnational terrorism exploits the legal traditions that emphasize the sovereignty of nation-states. Seeking reversals in systems of authority that have been established as foundations of individual governments, terrorists demand release of those who have been imprisoned according to due process, attempt to dictate policy without regard to the structure of democracy, and aspire to reorder society or to determine its direction without consideration of, or in spite of, a majority consensus.

There is evidence of increasing cooperation among terrorist organizations in the form of common logistical, technical, and financial support. Interaction among terrorist groups extends to all parts of the globe. The route of the three Japanese United Red Army gunmen who committed the mass murders at Tel Aviv's Lod airport in May 1972 is a classic illustration of this cooperation. The three first flew to the United States and Canada, and then on to Paris, at the time a base of operations for their comrades in the Popular Front for the Liberation of Palestine (PFLP). From France they went to Lebanon, where they received training at a fedayeen camp. They then returned to their friends in Paris, remaining until false passports could be obtained from Frankfurt. Then it was on to Rome, where Italian terrorists supplied them with grenades and automatic weapons made in Czechoslovakia. The weapons were stored in the apartment of a German sympathizer until the terrorists flew to the airport in Tel Aviv, where they slaughtered twenty-six men and women and

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wounded sixty-seven others, selecting their targets at random from people who happened to be in the passenger lounge.

Terrorist groups are known to receive substantial support from cooperative governments. This backing ranges from apparently passive provision of safe harbor to permission to use air space to active promotion and encouragement of terrorists with money, arms, or training. Nations that are now or have recently been involved in supporting terrorism include Libya, Cuba, the Soviet Union, China, North Korea, Algeria, the People's Democratic Republic of Yemen (Aden), Tanzania, Zaire, Egypt, Syria, Iraq, and Lebanon.

The American Perspective

Is the United States prepared to deal with contemporary terrorism? What are the implications of the threat to this country? Have adequate steps been taken by our government to counter these terrorist groups?

The strong interaction between once loosely-connected terrorist organizations highlights the vulnerabilities of advanced industrialized nations, among which the United States is surely no exception. Sponsorship and support of terrorist activities by other nations are well-documented. What is not clear is the degree of involvement of these nations in active encouragement of terrorist activities.

The situation in the Middle East provides a case in point. The paramount objective of Palestinian terrorists has been expressed in many public statements: namely, the establishment of a Palestinian homeland. Fortunately, the United States has not been used as a shooting gallery for publicizing this struggle, perhaps because our government has been perceived as less than totally committed either in opposing or in supporting the establishment of a Palestinian state. But America has not escaped entirely; it has paid a human and economic price for the Middle East conflict. Although OPEC's cutoff of oil exports in 1973 was the most vivid act, it should be remembered that Sirhan Sirhan wrote in his notebook that it was "necessary" to murder Robert Kennedy by June 5, 1968, the first anniversary of the 1967 Six-Day War in which the Israelis captured Sirhan's birthplace, East Jerusalem. In the same notebook a newspaper clipping was found that characterized Kennedy as hawkishly pro-Israel, further evidence that the New York senator was the victim of an assassin motivated by

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concern over his lost homeland.[1]

The United States has been relatively untouched by the storm of terrorist activities of the past decade. Any number of hypotheses have been brought forth to explain this, ranging from our people's basic confidence in this country's ability to respond to injustice to just plain luck. Although a definitive explanation is hardly possible, certain factors do come to mind. Unlike the nations of western Europe, America has never had a popular, broad-based left – nor a broad-based right, for that matter. Our tradition of mainstream, consensus politics has tended to preclude extremism and, consequently, offers little if any history of efficacious extremist activity. Critical exceptions abound, certainly, dating back to the Boston Tea Party, a prototypical terrorist event, but the continuity of our democratic republic is characterized by the peaceful transfer of authority and by peaceful change.

To some degree, certainly, America has always represented a myth of infinite futures, the promise of new beginnings inherent in our conception of the frontier. So it has avoided the claustrophobic atmosphere that is characteristic of older societies in which history is a nightmare, a burden on the living, tormenting both the intelligentsia and the disenfranchised. More specifically, we have no immediate experience of fascism to haunt our young and to be repressed. All of this is not to say that we have had no terrorist problem, nor can we necessarily dismiss the threat of terrorism in the future. A tiny number of isolated individuals are capable of doing no small amount of damage. But, clearly, terrorism in America has not been the apparently endemic problem faced by the people of Italy, West Germany, and Japan.

The United States has been extremely fortunate in not having been more involved in the transnational terrorist incidents of the last decade. But this country has the most sophisticated and complete media coverage of any nation on earth and terrorism is theater seeking as broad a viewing audience as possible. What stage could be better than the United States?

As President Carter becomes more involved in mediating a Middle East settlement, we must certainly question whether the center stage for terrorist activities will continue to be the

1. Peter Kihss, "Notes on Kennedy in Suspect's Home," *New York Times*, June 6, 1968, p. 1.

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Mediterranean and whether the United States will continue to enjoy its relative immunity. Ambassador Heyward Isham, former director of the State Department's Office for Combatting Terrorism, assessed the situation in July 1978:

> The US government is seen by radical Palestinian organizations as a pivotal political actor in the Mideast. We are aligned, to be sure, with Israel, their primary enemy. We are, as well, supportive of the moderate Arab regimes, particularly Egypt and Jordan, whose peace initiatives threaten the solidarity and viability of the Rejectionist Front. We have been fortunately spared Palestinian terrorist operations within the US to date. As the likelihood of some accord in the Mideast becomes greater, and as the US is increasingly perceived as having vital interest in such initiatives, this country will become an irresistible target of forces bent on sabotaging any accord. It is, frankly, only a matter of time, given the current alignment of forces.[2]

A high degree of uncertainty is ever present. Anyone commenting on current public policy issues runs the risk of being overtaken by events. Alas, there is no "crystal ball." But the determination of individual countries to combat terrorism and the extent of international cooperation can substantially influence the magnitude of the threat. So it is important to analyze American policy initiatives that already exist and to try to evaluate their potential effectiveness. Does the United States have an emergency preparedness program that will provide the degree of protection essential to meet tomorrow's terror?

America's Incident Management Machinery

In 1977, an extensive review of U.S. policy and procedures for dealing with the terrorist threat took place under the sponsorship of the National Security Council (NSC) and resulted in the policy guidelines set forth in Presidentially Requested Memorandum-30 (PRM-30).[3] It was determined

2. Quoted in Gregory F. Rose, "The Terrorists Are Coming," *Politics Today*, July/August 1978, p. 22.

3. U.S. Congress, Senate, Committee on Governmental Affairs, *Reorganization Plan No. 3 of 1978, Establishing a New Independent Agency, the Federal Emergency Management Agency*, Report No. 95-1141, 95th Cong., 2nd sess., August 23, 1978, p. 27.

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that within the NSC its Special Coordinating Committee (SCC), chaired by the President's national security adviser, would function as the primary liaison between the council and the government's planning and operating elements responsible for countering acts of terrorism. The SCC is the binding matrix linking the operating agencies with the President.

Although it would be virtually impossible to keep the President from assuming the central position in a major terrorist situation — witness President Ford in the 1975 LaGuardia bombing issuing a public statement and directing his federal agencies to conduct an extensive review of airport security — the establishment of a well-conceived structure to manage a crisis is of primary importance. America's incident management system is based on delegation of authority. Responsibility for managing international incidents has been given to the State Department's Office for Combatting Terrorism, while an analogous office within the Justice Department takes the lead in internal matters.

Were an international incident to occur that involved citizens, property, or interests of the United States, the State Department would assume responsibility for its management. Although the lead-agency concept that preordains the State Department's central role may be straightforward, a lot can go wrong. For the relatively simple incident the concept is viable, but a strict adherence to bureaucratic etiquette may not suffice if the terrorists proved to be unobliging. It is impossible for a lead entity to deal effectively with serious acts of terror without having done its homework. To become prepared, it would be of great value to simulate a broad range of possible situations in order to focus legal and other research and to test contingency plans were an actual confrontation to occur. As the terrorist threat continues to evolve, the legal constraints within which the government must operate need an ongoing review. In some instances, new legislation will be required. After new legal authorities are established, a method must be devised to test them through the simulated dynamics of a variety of realistic scenarios. In an actual terrorist situation, legal guidance beyond existing authority may often be required.

The members of an effective crisis management team must be carefully selected and authorized to deal completely with a myriad of complex problems. Since crises always seem to occur at the least convenient times, steps must be taken to guarantee

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that trained people are always available.

A carefully planned, adequately equipped, and fully operational command post is a central requirement. The State Department and the other major actors in the national security community have established command posts that are continuously operational. These command posts must answer the need for adequate communication and information gleaned from both live and simulated experiences. Communications needs extend from secure telephone networks to radio and microwave equipment and to satellite relays, thus ensuring necessary linkages between central control and the most remote areas of the world.

Good information is the key to realistic assessment of an ongoing terrorist incident. Having considerable data about the area within which the event is unfolding would be important. As a related matter, it would be necessary to make an assessment of the terrorists' weapons and equipment and to obtain psychological profiles of the terrorists. The technologically sophisticated incident could present government with especially difficult problems. Good intelligence could thus play a determining role. Under certain circumstances, there would be legal restrictions on the sharing of intelligence information.

Another requisite is flexibility. We must not inflict grievous self-injury by denying ourselves basic tools. All the above-cited factors governing an ongoing incident must be integrated. Gaming and other such exercises are needed to maintain a workable lead-agency concept.

During the past three years, federal authorities have considered these factors of incident management. Embassies throughout the world are aware of their potential involvement in a terrorist situation. The special task forces set up by the State Department in actual terrrorist situations have involved other departments and agencies. Thus, policy formulation and contingency planning are being given serious attention.

A rudimentary structure for incident management is in place. Simulations are being contemplated; military exercises have been conducted. Special U.S. military forces can function as an effective operational arm. These units are capable of dealing with a broad range of terrorist situations in which force or containment is required. Although vexing questions about the adequacy of the decision-making structure remain unanswered, a degree of responsible progress is evident.

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The Justice Department, supported by the Federal Bureau of Investigation, is responsible for the law enforcement aspects of domestic terrorist incidents. The Protection of Foreign Officials (PFO) statute, passed in 1968, expanded FBI responsibility for terrorist actions. But in some domestic terrorist situations, the federal government, including the FBI, may not have sufficient legal authority to become actively involved. However, the FBI interacts closely with law enforcement agencies throughout the country by training their officers in the use of the latest equipment as well as teaching them current paramilitary and hostage-negotiation techniques. Through these efforts local, state, and federal law enforcement agencies learn to support one another.

The interaction between the federal government and local jurisdictions is crucial, but it is nevertheless a murky, ill-defined matter that must be worked out before a serious terrorist assault occurs. The problems of communications and coordination are critical. Here again the FBI's training efforts have paid off.

Dealing with the Consequences of Terrorism

President Carter announced Reorganization Plan Number 3 on June 19, 1978, establishing a new agency to deal with civil emergency preparedness. This Presidential initiative merges the federal government's emergency preparedness and disaster response programs. Five existing agencies and six additional disaster-related responsibilities are being combined to achieve a more manageable and responsive federal system. For emergencies ranging from natural and manmade disasters to nuclear attack, the reorganization is perceived as a consolidation of federal preparedness responsibilities. Two emergency functions not previously assigned to any specific federal agency are incorporated into the new plan: "(1) coordination of emergency warning and (2) federal response to consequences of terrorist incidents."[4]

By law (Section 906 of title 5, United States Code), sixty working days were provided for congressional review of the proposed Presidential reorganization plan. By not vetoing the plan, Congress endorsed its implementation. The new govern-

4. *Ibid.*, p. 2.

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mental agency has been given a significant terrorist response assignment. The Presidential action is an acknowledgment of the developing terrorist problem and provides a new apparatus for planning and emergency preparedness functions to deal with terrorism.

How will the new agency work? What is the extent of its responsibility? Little information is available to explain the intent of the President in this new assignment. But, if the new agency is to be effective, it must emphasize the readiness of the federal government to act decisively to mitigate the consequences of nationally disruptive acts of terrorism.

Much was unclear after the brief mention in the White House Fact Sheet of the assignment to the new agency of "federal response to consequences of terrorist incidents."[5] The testimony before Congress during the hearings on the reorganization plan did not provide much more insight into this highly significant mission. Neither the remarks by the President at the time he announced the emergency management reorganization nor his transmittal letter to the Congress provided details on the new authority to coordinate terrorist incidents. Yet this assignment could very well be one of the most important aspects of the new agency. If properly developed, this authority could become the basis for the kind of planning that would be so necessary were terrorist activities in the United States to intensify.

Just days before the reorganization plan became effective, Ambassador Anthony Quainton, currently director of the State Department's Office of Combatting Terrorism, wrote an excellent commentary, "Dealing with Terrorism," which appeared in the *Christian Science Monitor.*[6] He stated that the international implications of terrorism are critical, but he did not discuss the responsibilities of the proposed emergency management agency in regard to terrorism. After pointing out the need for cooperation and consensus among nations, Ambassador Quainton discussed the domestic need in the United States for effective coordination.

Before Presidentially Requested Memorandum-30, which

5. White House Fact Sheet on Reorganization Plan No. 3, Office of the White House Press Secretary, June 19, 1978.

6. Anthony Quainton, "Doing Something about Terrorism – Abroad and at Home," *Christian Science Monitor*, September 7, 1978, p. 23.

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established policy guidelines for terrorist incident management, the bureaucratic tangle of authorities had been coordinated by the National Security Council and the Working Group of the Cabinet Committee to Combat Terrorism.[7] More than twenty-eight agencies have had some policy or operational interest in managing crises. The implications of assigning emergency preparedness and disaster response to the Federal Emergency Management Agency have yet to be spelled out. In a report on the agency submitted by the House Committee on Government Operations, terrorism is mentioned only briefly: "The President intends to give the new agency . . . coordination of planning to reduce the consequences of major terrorist incidents," and "the reorganization plan is part of a broader program to consolidate Federal emergency preparedness functions."[8]

In the report from the Senate Committee on Governmental Affairs relating to Reorganization Plan Number 3, one section deals with a range of possible consequences of terrorist incidents. Concern is expressed that should terrorism change from isolated events to coordinated offensives, the results would be devastating. Countries would be forced to contend with substantial loss of life, extensive property damage, and severe threats to their political stability. A major escalation in terrorist attacks "could cause more serious and more rationally significant social, economic and political consequences."[9] The Senate's report went on to say that terrorist incident management is being handled by the National Security Council and will so continue. The Senate recognized the crux of the dilemma:

> When the requirement exists, the SCC coordinates the actions of the Federal law enforcement agencies involved in responding to the criminal act of terrorism. None of the responsibilities of the SCC or the law enforcement agencies will be changed by the reorganization.

7. U.S. Congress, Senate, Committee on Governmental Affairs, *Reorganization Plan No. 3*, p. 27.

8. U.S. Congress, House, Committee on Governmental Operations, *Reorganization Plan No. 3 of 1978 (Emergency Preparedness)*, Report No. 95-1523, 95th Cong., 2nd sess., August 21, 1978, p. 2.

9. U.S. Congress, Senate, Committee on Governmental Affairs, *Reorganization Plan No. 3*, p. 27.

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By contrast, the responsibilities for consequences management are not clear. As a result, Federal agencies are reluctant to plan or commit resources. The President has no one source he can turn to for reports on the damage incurred, the resources available to respond, and the relief actions underway. To fill the void, the new agency will monitor terrorist incidents in progress and, as required, report the status of consequences management efforts to the President. Consequences management in terrorism will thus be a capability in the broad all-risk, all-emergency functions of the agency. The vulnerability assessment activities of the new agency will be directed toward identification of physical actions that might be taken to reduce damage against specific kinds of targets, and identification of areas and types of scenarios that will require consequences management.

Immediately after a terrorist attack in cases where the domestic situation would be so serious as to become a matter of national security concern, it is anticipated that the SCC and the White House Emergency Management Committee would meet together and develop joint recommendations on response for the President.[10]

The Role of the New Agency

What are the implications of the proposed interaction between the new agency and the National Security Council suggested in the Senate policy? Providing a considerably more detailed commentary than the House report, the Senate sees the new agency being set up to have, in addition to management responsibilities for consequences of major terrorist incidents, an assignment to monitor, report, and advise the President on the status of the consequences management effort. Stating the Administration's position, James T. McIntyre, director of the Office of Management and Budget, affirmed that the President would assign the new agency responsibility for "coordination of preparedness and planning to reduce the consequences of major terrorist incidents. This will not alter present executive branch responsibilities for the prevention and control of terrorist incidents."[11]

10. *Ibid.*

11. Testimony of James T. McIntyre, in U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Intergovern-

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Unfortunately, the new Federal Emergency Management Agency is not located in the Executive Office of the President, but has the same status as all other federal agencies. The Executive Office of the President is generally accepted to be the coordinating level of government speaking for the President. In any national security emergency the key actor would be the National Security Council, which is an Executive Office agency. Similarly, the Office of Management and Budget could not function effectively outside the Executive Office, while an agency like the General Services Administration has broad coordinative authority but is outside the Executive Office and has limited influence within the government. If the responsibility for managing the consequences of terrorism is located outside the Executive Office and if this means that consequences management will receive less emphasis than incident management, then it is very possible that a future terrorist situation could get out of hand. To appreciate how closely linked the management of incidents and that of consequences can be, one need only imagine a chemical or biological threat to a major population center.

Fortunately, Mr. Carter is establishing an Emergency Management Committee, chaired by the new agency's director, which would report directly to him. Membership would include the Assistants to the President for National Security, for Domestic Affairs and Policy, and for Intergovernmental Relations, as well as the director of the Office of Management and Budget. The committee would establish broad policies for exercise of emergency authorities and advise the President on alternative courses of action in national civil emergencies and on the costs and benefits of alternative policies for improving performance and avoiding excessive costs. In the past there has been a tendency to build staff to support the functions of an active committee. It will be interesting to see how the staff requirements of the Emergency Management Committee are met and what relative position this committee will hold, in relation to both the new agency and to the Executive Office of the President. We will find out whether the chairmanship of this high-level committee will compensate for the inferior location of the new agency.

mental Relations, "The Disaster/Preparedness Reorganization Plan," Transcript of Proceedings, June 20, 1978, p. 8.

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Crisis management is an unusual challenge. For example, in an emergency management situation it is often necessary that individuals of low governmental rank deal directly with department or agency heads. This may seem to be a petty matter but it would prove to be binding at a time of great strain. The point is that individuals of relatively low rank can function as representatives of the President if they belong to the Executive Office. Under the new plan, the Emergency Management Agency is at the same level as other agencies, a level that is somewhat below the relative status of cabinet departments.

The underlying reason for the reorganization, which consolidates the various emergency management functions, was that these functions were scattered throughout the government. The result was an ineffective civil emergency apparatus. The rationale for the consolidation of the programs for natural disaster, civil emergency preparedness, and civil defense should apply to the separate responsibilities for incident and consequences management as well. Will the separate but parallel authorities for these two different but interlocked assignments be cumbersome to administer without conflict and confusion? At this stage it would be difficult to say, but in the end much of the operation of any organization or system depends on the caliber of the individuals involved and their ability to interact with their counterparts in other agencies. Coordination between federal agencies has often been a difficult task.

How would the FBI react if ordered by a new agency to clear, subordinate, or coordinate all administrative decisions regarding a domestic terrorist incident before taking action in order to reduce the possible consequences of a terrorist situation? How would the Department of Defense react to directions from a second- or third-level agency to make transportation, communication equipment, and personnel available to deal with a crisis situation? How would the State Department respond to limitations or restrictions on its authority to coordinate and deal with international terrorist situations or to the monitoring and reporting role of an outside independent agency charged with responsibility for mitigating the consequences of a terrorist incident?

In developing a sound policy of crisis management, we must give special attention to ensuring that bureaucratic uncertainty cannot paralyze our government at a critical juncture.

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Extremely difficult choices will have to be made as a particular terrorist challenge unfolds. A fundamental policy goal must be the development of a framework in which reasoned judgment can prevail over the parochial concerns of a balkanized federal infrastructure. Although President Carter is to be commended for his effort at moving the executive branch organization in this direction, the specific nature of his plan leaves as yet undetermined whether one more unworkable structure has been superimposed on a bureaucracy that remains ill-equipped for the demands of crisis management.

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The Effect of Equal Rights Amendments in State Constitutions

PHYLLIS SCHLAFLY

In the span of years during which the proposed Equal Rights Amendment[1] to the United States Constitution has received active consideration by the Congress and the various state legislatures, that is, during the decade of the 1970s, several states have amended their state constitutions by provisions which have become popularly known as State Equal Rights Amendments (ERAs).[2] Since these State ERAs are sometimes believed to be state enforcement of what the Federal ERA, if ever ratified, would require on a nationwide basis and are believed, therefore, to forecast the eventual effect of a Federal ERA, it is important to analyze their language and the effect they have had in the various states that have enacted them.

Since it is self-evident that legislatures have the power to pass sex-equal laws and to repeal sex-discriminatory laws independent of any ERA, this discussion will be generally limited to an analysis of the amendments themselves and of the changes in state laws which have been compelled by the State ERAs through court decisions. Also, in order to be accurately attributable to a State ERA, such changes must be beyond those which would have been required had the case been brought under the already-existing Equal Protection Clause of the Fourteenth Amendment, which has been used repeatedly by the U.S. Supreme Court and other courts to invalidate many sex-discriminatory federal and state laws.[3]

1. H. R. J. Res. 208, 92d Cong., 1st Sess. (1971). For proponent discussion of the proposed Federal ERA, see Brown, Emerson, Falk, & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L. J. 871 (1971). For other sources, see H. Greenberg, *The Equal Rights Amendment: A Bibliographic Study* (1976); M. Hughes, *The Sexual Barrier: Legal, Medical, Economic and Social Aspects of Sex Discrimination* (1977).

2. For proponent discussion of State ERAs, see B. Brown, A. Freedman, H. Katz, & A. Price, *Women's Rights and the Law: The Impact of the ERA on State Laws* 19-36 (1977).

3. *See, e.g., Reed v. Reed*, 404 U.S. 71 (1971) (nullifying preference to men over women of the same entitlement class as administrators of decedents' estates).

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At the outset, several fundamental differences between the State ERAs and the proposed Federal ERA should be noted.

(a) No State ERA governs federal law. Therefore, many of the principal effects anticipated under the proposed Federal ERA would never result from any State ERA (for instance, the application of the full-equality principle to the military, including conscription and combat assignment). The House Judiciary Committee stated in its majority report on the Federal ERA, "For example, not only would women, including mothers, be subject to the draft but the military would be compelled to place them in combat units alongside of men."[4]

(b) State constitutions are interpreted principally by state courts. The proposed Federal ERA would, if ratified, be interpreted principally by the federal courts, which include some of the most activist courts in the country. While state courts would be bound to follow the U.S. Supreme Court interpretation of the Federal ERA, federal courts would not be bound to interpret the Federal ERA to produce the same result as any state court's interpretation of its State ERA. The proposed Federal ERA would give the federal courts a blank check to fill in after ratification. Thus, as Professor Paul Freund stated, "If anything about this proposed amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court of the United States."[5]

(c) The legislative histories of the Federal and the State ERAs are different. The proposed Federal ERA has an extensive and recorded legislative history, including lengthy congressional debate in both houses and many roll-call votes on proposed modifications in language which establish a clear pattern of legislative intent for the guidance of the courts. In the U.S. Senate, Senator Sam J. Ervin, Jr., offered nine amendments variously exempting from the absolute-equality mandate compulsory military service; combat duty; the traditional rights of wives, mothers, widows and working women; privacy; punishment for sexual crimes; and distinctions made on physiological or functional differences. All amend-

4. House Comm. on the Judiciary, Equal Rights for Men and Women, H. R. Rep. No. 359, 92d Cong., 1st Sess., 3 (1971).

5. Senate Comm. on the Judiciary, Equal Rights for Men and Women, S. Rep. No. 689, 92d Cong., 2nd Sess., 34 (1972).

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ments were defeated on roll-call votes, forcing the legal conclusion that the Federal ERA is designed to accomplish precisely what Senator Ervin and his supporters sought to exempt.[6] In contrast, the legislative history of State ERAs

6. Amendment 1065: "This article shall not impair, however, the validity of any laws of the United States or any State which exempt women from compulsory military service." Defeated: 73 nays, 18 yeas, 8 not voting, 118 Cong. Rec. 9336 (1972).

Amendment 1066: "This article shall not impair the validity, however, of any laws of the United States or any State which exempt women from service in combat units of the Armed Forces." Defeated: 71 nays, 18 yeas, 10 not voting. 118 Cong. Rec. 9351 (1972).

Amendment 1067: "This article shall not impair the validity, however, of any laws of the United States or any State which extend protections or exemptions to women." Defeated: 75 nays, 11 yeas, 14 not voting. 118 Cong. Rec. 9370 (1972).

Amendment 1068: "This article shall not impair the validity, however, of any laws of the United States or any State which extend protections or exemptions to wives, mothers, or widows." Defeated: 77 nays, 14 yeas, 9 not voting. 118 Cong. Rec. 9523 (1972).

Amendment 1069: "This article shall not impair the validity, however, of any laws of the United States or any State which impose upon fathers responsibility for the support of their children." Defeated: 72 nays, 17 yeas, 11 not voting. 118 Cong. Rec. 9528 (1972).

Amendment 1070: "This article shall not impair the validity, however, of any laws of the United States or any State which secure privacy to men or women, boys or girls." Defeated: 79 nays, 11 yeas, 10 not voting. 118 Cong. Rec. 9531 (1972).

Amendment 1071: "This article shall not impair the validity, however, of any laws of the United States or any State which make punishable as crimes sexual offenses." Defeated: 71 nays, 17 yeas, 12 not voting. 118 Cong. Rec. 9537 (1972).

These amendments were offered as substitute texts for ERA:

Amendment 472: "Neither the United States nor any State shall make any legal distinction between the rights and responsibilities of male or female persons unless such distinction is based on physiological or functional differences between them." Defeated: 78 nays, 12 yeas, 10 not voting. 118 Cong. Rec. 9538 (1972).

Amendment 1044: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. The provisions of this article shall not impair the validity, however, of any laws of the United States or any State which exempt women from compulsory military service, or from service in combat units of the Armed Forces; or extend protections or exemptions to wives, mothers, or widows; or impose upon fathers responsibility for the support of children; or secure privacy to men or women, or boys or girls; or make punishable as crimes rape, seductions, or other sexual offenses." Defeated: 82 nays, 9 yeas, 9 not voting. 118 Cong. Rec. 9540 (1972).

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is sparse or non-existent. Most state legislatures do not print committee reports. Many state legislatures do not keep a journal which records debates. Many state legislatures enacted State ERAs (as well as ratifications of the Federal ERA) with little or no debate. There is no significant evidence to prove that the legislative intent of the State ERAs requires an absolute standard of interpretation.

The Textual Differences

In order to examine the hypothesis that the effect of State ERAs can be extrapolated into a valid prediction of what the proposed Federal ERA, if ever ratified, would accomplish, it is necessary first to compare the text of the proposed Federal ERA with those of the seventeen states which are sometimes alleged to have enacted a State ERA.

The proposed Federal Equal Rights Amendment, passed by Congress and sent to the states to start the ratification process on March 22, 1972, reads in full as follows:

> Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
>
> Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
>
> Section 3. This amendment shall take effect two years after the date of ratification.[7]

No state, of course, has put the full Federal ERA language into its state constitution. No State ERA has a "Section 2" giving Congress the power of enforcement or shifting any power from the states to the federal government.

A clause identical to Section 2 appears in seven other amendments to the U.S. Constitution. Many Supreme Court cases since 1965 have interpreted the identical enforcement clause in the Thirteenth, Fourteenth and Fifteenth Amendments in a way that accomplishes a transferral of power from the states to the Congress that is even broader than the Necessary and Proper Clause or the Commerce Clause. These decisions shifted from the states to the federal domain powers

7. H. R. J. Res. 208, 92d Cong., 1st Sess. (1971).

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over elections,[8] private property,[9] and private schools.[10]

This same enforcement clause grants Congress not only the power to enforce Section 1, but also the power to define what Section 1 means and to preempt valid state laws in order to substitute its decision-making power for that of the states.[11]

Just as the identical enforcement clauses of the Thirteenth, Fourteenth and Fifteenth Amendments have transferred from the states to the federal government the enforcement and preemption power over the subject-matter of Section 1 of those amendments, Section 2 of the Federal ERA would likewise transfer from the states to the federal government the enforcement and preemption power over the subject-matter of Section 1 of ERA, namely, all state laws that have traditionally made distinctions based on sex. This would include laws governing marriage, divorce, child custody, family property, inheritance, widow's privileges, homosexual activity, abortion, prison regulations, insurance rates, and private schools.

That the enforcement power over ERA will be in the hands of the federal government is further confirmed by its legislative history. In all earlier versions of the Federal ERA, from its first introduction into Congress in 1923 until 1971, Section 2 read: "Congress *and the several states* shall have power, *within their respective jurisdictions*, to enforce this article by appropriate legislation." When the version that was finally passed was introduced in 1971, the words emphasized above were deleted.

The reach of Section 2 of ERA is so extensive that Senator Sam J. Ervin, Jr., recognized as the dean of lawyers in the U.S. Senate until his recent retirement, told the Senate on March 22, 1972:

> If this Equal Rights Amendment is adopted by the states, it will come near to abolishing the states of this Union as

8. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *Oregon v. Mitchell*, 400 U.S. 112 (1970); *Dougherty County, Georgia, Board of Education v. White*, 58 L. Ed. 2d 269 (1978) (holding that a school board in Georgia had to secure federal approval before enacting a regulation requiring its employees to take a leave of absence from a paid job when running for political office).

9. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

10. *Runyon v. McCrary*, 427 U.S. 160 (1976).

11. *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

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> viable governmental bodies. I think it will virtually reduce the states of this nation to meaningless zeroes on the nation's map. I think it will transfer virtually all the legislative power of government from the states to Congress.[12]

The vast areas of legislation subject to Section 1 of ERA, because of traditional distinctions made between the sexes, make it certain that the shift of power from the states to the federal government under Section 2 of ERA would be even greater than under the enforcement clauses of the Thirteenth, Fourteenth or Fifteenth Amendments. Under the maxim *cui bono*, this effect is more than sufficient to explain the unprecedented efforts made by the executive branch of the federal government to induce state legislatures to ratify ERA.[13]

Even if all fifty states were to adopt a State ERA, their cumulative effect on our unique American federal structure and on our methods of fighting wars would be minuscule compared to the vast changes that would be compelled by the Federal ERA.

Ambiguous Terminology

Nowhere in the Federal or in any State ERA are the terms "equality of rights" or "sex" defined. The former is not a term of art for which there are legislative, judicial, or dictionary

12. 118 Cong. Rec. 9566 (1972).

13. *E.g.*, the spending of $5 million by the National Commission on the Observance of International Women's Year, which declared that "In April 1975 the IWY Commission members were appointed and on April 14 and 15 the full IWY Commission met for the first time and chose ratification of the Equal Rights Amendment as its top priority issue," that "The following resolution was unanimously passed: The National Commission on the Observance of International Women's Year, as its first public action and highest priority, urges the ratification of the Equal Rights Amendment," and that "As our main commitment to the observance of International Women's Year, we pledge to do all in our capacity to see that the Equal Rights Amendment is ratified at the earliest possible moment." U.S. National Commission on the Observance of International Women's Year, ". . . *To Form A More Perfect Union*. . . ": Justice for American Women 219 (1976). And see President Carter's Memorandum for the Heads of Departments and Agencies on Equality for Women, 14 Weekly Comp. of Pres. Doc. 1335 (July 20, 1978) (directing all federal officials to lobby for ratification of the proposed Federal ERA).

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definitions. It is a nebulous phrase that can mean different things to different people, especially in situations in which different results would be obtained depending on which quality of the asserted right is being equalized. The phrase came into our constitutional lexicon without any judicial history to circumscribe its scope. "Sex" is a word with a half dozen different dictionary definitions which may be loosely divided into (a) the sex you are and (b) the sex you do. No ERA tells us which definitions of sex are covered. No ERA excludes any definitions of sex.

Despite the large number of states that are alleged to have State ERAs, the texts reveal a great difference in language, and experience reveals a great difference in effect.

The Colorado Constitution reads: "Equality of rights under the law shall not be denied or abridged by the state of Colorado or any of its political subdivisions on account of sex."[14]

The Hawaii Constitution reads: "Equality of rights under the law shall not be denied or abridged by the state on account of sex."[15]

The Maryland Constitution has the same language but does not limit the scope to state action: "Equality of rights under the law shall not be abridged or denied because of sex."[16]

Two state constitutions, which have language similar to the proposed Federal ERA, do not limit the scope of control to state action, but do limit the benefits to individuals. The Pennsylvania Constitution reads: "Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual."[17] Note that the language says "in" Pennsylvania, not "by" Pennsylvania. The New Mexico Constitution reads: "Equality of rights under law shall not be denied on account of the sex of any person."[18]

No case has yet addressed the issue of what difference it may make to limit the benefits to individuals or to persons.

14. Colo. Const. art. 2, §29 (adopted Nov. 7, 1972; effective Jan. 11, 1973).
15. Hawaii Const. art. 1, §21 (adopted Nov. 7, 1972).
16. Md. Const. art. 46 (ratified Nov. 7, 1972).
17. Pa. Const. art. 1, §28 (adopted May 18, 1971).
18. N.M. Const. art. 2, §18 (adopted Nov. 7, 1972; effective July 1, 1973).

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It would appear to exclude corporations from having a cause of action. It should surely exclude non-human rights; it was suggested during the debate on the Federal ERA that it is broad enough to outlaw any distinction between, say, male and female dogs.

It could also be argued that the Pennsylvania and the New Mexico State ERAs would not cover collective rights. This could be an important field because the prohibition of discrimination on the basis of sex which appears in Title VII and Title IX of the Federal Civil Rights Act has been interpreted by the courts and by federal agencies in the employment and education fields, respectively, as permitting or requiring affirmative action on a group, or collective, basis.[19] Although the word "quota" is almost never used, the targets, goals, timetables, and profiles are expressed in statistical terms to measure members of an identifiable group. Since affirmative action programs accord rights to groups rather than to individuals, it could be argued that the Pennsylvania and New Mexico State ERAs would not permit affirmative action. The original sponsors of the Federal ERA certainly planned it to include affirmative action for women and so stated in congressional debate.[20]

The Washington State ERA adds the phrase "and responsibility": "Equality of rights and responsibility under the law shall not be denied or abridged on account of sex."[21] That extra word is explicit recognition of the fact the sex-neuterization of legislation involves imposing responsibilities as well as granting rights. One person's right may be another's responsibility or duty.

The Alaska Constitution is one of several state constitutions that limit the application of ERA to civil and political rights: "No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex or national

19. *See, e.g., EEOC v. American Telephone & Telegraph Co.*, 365 F. Supp. 1105 (E. D. Pa. 1973).

20. *See, e.g.,* Brown, Emerson, Falk, & Freedman, *"The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women,"* 80 Yale L. J. 871, 904. The authors assert that affirmative action for women is wholly compatible with the absolute nature of ERA.

21. Wash. Const. art. 31, §1 (approved Nov. 7, 1972).

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origin."[22] This language would include political rights such as voting and running for office and civil rights such as freedom of speech, press, religion, travel, education, the right to make contracts, to sue and to engage in a useful occupation. Arguably, this language might exclude the various rights which are not civil or political rights, such as preferential property rights and support and custody rights belonging to wives, insurance benefits, or fringe benefits in employment.

The Montana Constitution is similar: "Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas."[23] This language is broad in that it extends to all kinds of private action as well as governmental action, but it is limited in scope to civil and political rights.

The Illinois Constitution has one of the so-called State ERAs that are not "equal rights" amendments at all because they do not use the undefined "equality of rights" language. The Illinois Constitution uses the familiar and judicially more precise language of the Fourteenth Amendment: "The equal protection of the laws shall not be denied or abridged on account of sex by the state or its units of local government and school districts."[24] "Equal protection of the laws," through a century of litigation, has not been held to mean that every person must be treated equally, but that persons similarly situated must be similarly treated, thereby allowing classifications for rational legislative purposes. The "equal protection" amendments, therefore, have a wholly different parentage from that of the "equal rights" amendments. It is a mistake to assert that a state has an ERA when it actually has an EPA (Equal Protection Amendment).

Connecticut also has an "equal protection" amendment instead of an "equal rights" amendment: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race,

22. Alas. Const. art. 1, §3 (approved Aug. 22, 1972; effective Oct. 14, 1972).

23. Mont. Const. art. 2, §4 (adopted June 6, 1972).

24. Ill. Const. art. 1, §18 (adopted Dec. 15, 1970; effective July 1, 1971).

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color, ancestry, national origin or sex."[25]

In another group of states, "sex" is simply included in a catchall anti-discrimination provision. While the language may appear to be as strict as that of the Federal ERA, the courts have not construed this type of State ERA as requiring an absolutist interpretation. Although this difference is nowhere explained in judicial opinions, it is reasonable to argue that the legislative history and adoption by the voters of a general provision barring discrimination against various minorities do not reveal sufficient identification of the "sex" issue to justify overturning traditional, rational differences of treatment between males and females.

The Texas Constitution states: "Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin."[26]

The New Hampshire Constitution reads: "Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin."[27]

Massachusetts was the most recent state to insert a general anti-discrimination provision into its Constitution: "Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin."[28]

The Virginia Constitution also uses general anti-discrimination language but adds an express qualifying clause that carves a clear exception to the otherwise broad mandate: ". . . the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination."[29] That last clause should eliminate the restroom argument in connection with the Virginia ERA.

Pitfalls of An Absolute Mandate

The Virginia State ERA proves that constitutional draftsmen know that a prohibition against all sex discrimination also bans

25. Conn. Const.art. 1, §20 (adopted Nov. 5, 1974).
26. Tex. Const. art. 1, §3a (adopted Nov. 7, 1972).
27. N. H. Const. Pt. 1, art. 2d (1974).
28. Mass. Const. art. 1 (adopted Nov. 2, 1976).
29. Va. Const. art. 1, §11 (ratified Nov. 3, 1970; effective July 1, 1971).

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sex-separation unless that is specifically excepted. Ever since *Brown v. Board of Education*[30] in 1954, it has been constitutionally clear that, in matters of race, separate-but-equal is not equal but discriminatory. The obvious implications of the unique language in the Virginia ERA probably explain why ERA proponents usually omit Virginia from the list of states having a State ERA. The Connecticut ERA forbids segregation because of sex, but that must be read in the context of the equal-protection language which permits rational classifications.

The Louisiana Constitution also proves that some states fully understand the pitfalls of an absolute mandate against all sex discrimination and want to guard against its rigidity. Its constitutional provision has a unique wording: "No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations."[31]

The Utah and Wyoming provisions are also usually omitted from lists of State ERAs on the pretext that they were enacted in the 1890s and, therefore, are not relevant to the current controversy. However, their language is just as modern.

The Utah Constitution reads: "The rights of citizens of the state of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this state shall enjoy equally all civil, political and religious rights and privileges."[32] The Utah ERA sounds as though it were written in the 1970s.

The Wyoming Constitution reads: "Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction."[33]

The wide variations in the language of the various State ERAs, combined with the imprecision and lack of definition of the operative terms, mean that courts have a wide latitude to

30. 347 U.S. 483 (1954).
31. La. Const. art. 1, §3 (adopted Apr. 20, 1974; effective Jan. 1, 1975).
32. Utah Const. art. 4, §1 (1896).
33. Wyo. Const. art. 1, §3 (1890).

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do as they please in interpreting the State ERAs and the State EPAs (Equal Protection Amendments). There is absolutely no assurance that the courts of one state will follow the interpretation of another or that the federal courts will follow any state court.

So far there has been relatively little litigation based upon State ERAs. Enough litigation has taken place, however, to see that a general pattern is emerging in the courts. (a) If possible, courts are avoiding the interpretation of their State ERA by deciding cases on some other basis. (b) In states that have authentic State ERAs (those which contain language closely paralleling Section 1 of the Federal ERA), courts are generally using a literal and inflexible interpretation, following the plain meaning rule. (c) The rest of the so-called State ERA states (whether they have an equal-protection provision or a civil-and-political-rights provision or a race-creed-color-sex provision) are following the standard of review traditional under the Equal Protection Clause of the Fourteenth Amendment; that is, a legislature is permitted to classify on a rational basis when the classification is related to a permissible legislative goal and does not violate a fundamental interest.

Of course, where the equal protection analysis is used, the alleged State ERA becomes a constitutional redundancy because all fifty states now enjoy the full protection of the Fourteenth Amendment of the U.S. Constitution.

Only six State ERAs have language sufficiently like Section 1 of the Federal ERA that they can reasonably be considered to offer guidance about the meaning and effect of the proposed Federal ERA: Colorado, Hawaii, Maryland, Pennsylvania, New Mexico, and Washington.

Effect on Family Law

When proponents were presenting their case for passage of the Federal Equal Rights Amendment to Congress in 1971 and 1972, they used as their principal legal statement about its anticipated effects an article of some hundred pages in the *Yale Law Journal*. The article was quite frank in proclaiming that the adoption of a Federal ERA "will give strength and purpose to efforts to bring about a far-reaching change which,

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for some, may prove painful."[34]

The chief victims of these "painful" effects of the "far-reaching change" will be wives and mothers. This is the inescapable conclusion to be drawn from the family law litigation in the states that have adopted authentic State ERAs.

In Washington, which has a State ERA, the court admonished wives to face up to what ERA means:

> It is to be remembered that while the 61st amendment to the Constitution of the State of Washington, approved November 7, 1972, is commonly referred to as the Equal Rights Amendment, it firmly requires equal responsibilities as well. This amendment is the touchstone of the developing case and statute law in the area of marriage dissolution.[35]

The holding in this case, *Smith v. Smith*, was that ERA requires equal responsibilities of parents for child support and that the ex-husband can get his support obligations reduced to meet the ERA standard.

Wives have traditionally had in this country a great variety of extensive rights based on their marital status, as a result of our public policy to respect the family as the basic unit of society, and as a statutory and common-law balance to the biological fact that only women have babies. These rights, which vary from state to state, include the wife's right of financial support in an ongoing marriage, the right of separate maintenance and payment of attorney's fees during divorce litigation, the right to alimony after divorce, the right to a presumption of custody of her children, rights against her husband's alienation of his property during his life or by will, and a variety of special benefits accorded to widows.

Such benign discrimination is wholly in harmony with the Equal Protection Clause and was seldom challenged prior to the 1970s. The U.S. Supreme Court in *Kahn v. Shevin*[36] made clear the current constitutionality and relevancy of such preferential statutes designed for the benefit of wives and widows. The Court held that, consistent with the Equal Protection

34. Brown, Emerson, Falk, & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L. J. 871, 884 (1971).

35. *Smith v. Smith*, 13 Wash. App. 381, 534 P. 2d 1033 (1975).

36. 416 U.S. 351 (1974).

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Clause, a legislature can make a rational classification of widows as a class of people who need a special benefit. The Court upheld Florida's property tax exemption for widows. The challenge to the Florida statute was strongly supported by pro-ERA lawyers.

The states that have State ERAs are blazing the trail of the "painful" effects of applying an absolute standard of equality to the marital and parental relationships. They provide a window into which we can look to see what "equality of rights" means when applied to the husband-wife relationship.

Maryland is a State ERA state. In *Coleman v. Maryland*,[37] the Court of Special Appeals held that the statute which makes it a crime for a husband to fail to support his wife is unconstitutional under the State ERA. The court said that this statute "establishes a distinction solely upon the basis of sex" and "such distinctions are now absolutely forbidden" by the State ERA.

The court discussed the social policy and the history of the law which made it the duty of the husband to support his wife, calling it "warp and woof of the prevailing ethos" of the nineteenth century. All that is changed now, according to the court; "that view has been subjected to a series of violent cultural shocks. The Equal Rights Amendment of 1972 more accurately reflects the ethos or zeitgeist of this time." The court held that the support statute "is no longer the public policy of this state."

Newspapers which had been strong supporters of ERA were made very uncomfortable by this decision, calling it "an unfortunate conflict" of sexual justice, but admitted that the court had "no alternative" under the State ERA. The newspapers accurately pointed out that, while imprisonment for nonsupport is seldom imposed, the threat of imprisonment is a most valuable and necessary tool "to impress upon husbands their financial responsibility."[38] It is almost the only tool available to reduce the welfare rolls because, in the absence of this law and the remedies available under it, a large group of women becomes the financial responsibility of the taxpayers.

Pennsylvania is a State ERA state and, because of the State ERA, wives have lost their common law and statutory right to

37. 37 Md. App. 322, 377 A. 2d 553 (1977).
38. *Baltimore Sun*, Sept. 26, 1977, Editorial, at A12.

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have their necessaries paid for by their husbands.

This common law right has been a right of wives for centuries and is an essential ingredient of the concept of the right of the wife to be supported in her home. The Pennsylvania statute read as follows:

> In all cases where debts may be contracted for necessaries for the support and maintenance of the family of any married woman, it shall be lawful for the creditor in such case to institute suit against the husband and wife for the price of such necessaries, and after obtaining a judgment, have an execution against the husband alone.[39]

In *Albert Einstein Medical Center v. Nathans.*[40] the issue was payment for medical and hospital services provided to the wife in an ongoing marriage which were conceded to be "necessary for her health, well-being and comfort." The court simply nullified the common law and statutory responsibility of a husband to pay for his wife's "necessaries," noting that these include not only medical care, but also food, clothing, and shelter.

The court waxed very righteous in applying the absolute standard under the State ERA. The court held that "all legal distinctions based on the male or female role in the marital relationship are rendered inoperative by the [State ERA] amendment" and that the common law concept obligating the husband to pay for his wife's necessaries is "repugnant to the Equal Rights Amendment." The court took judicial notice of what it called "medical and scientific advances which have increased both production and population . . . have made birth control a desirable social objective, and have been factors liberating her [a wife] from the common law requirements that tethered her to her husband and her husband's home."

'Painful' Effects of ERA

A year later in *Nan Duskin, Inc. v, Parks.*[41] the same court "confirm[ed]" the *Nathans* decision, again calling the law that a husband is liable for his wife's necessaries "repugnant" to the

39. 48 Pa. Cons. Stat. 116.

40. *Legal Intelligencer*, Aug. 24, 1977, at 1, col. 1 (Phila. County Ct. C. P. 1977).

41. *Legal Intelligencer*, Mar. 15, 1978, at 1, col. 1 (Phila. County Ct. C. P. 1978).

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State ERA. The court further explained that "reliance on the Support law, 62 P.S. 1921, adds nothing to defendant's position [because the] duty to support based on family relationship depends on dependence and indigency." In other words, although the Support Law was not the principal issue in this case, the court clearly pointed the "developing" law in the direction of establishing indigency or dependency as the only basis for a wife's claim of financial support from her husband in a state with a State ERA. Under ERA, a wife will have no claim to the financial support of her husband just because she is a wife and mother.

The implications of these decisions for the social and economic integrity of the family unit are "far-reaching," indeed. In the ERA world, there will be no right of the homemaker to make her career in the home unless she can prove she is indigent or about to go on welfare.

In *Henderson v. Henderson*,[42] the Pennsylvania Supreme Court ruled that the statute which allowed payment of alimony *pendente lite* (support during litigation), counsel fees and expenses to wives is unconstitutional under the State ERA. Before the court could nullify or extend the old law, the legislature extended liability for such payment to wives. Thus, the State ERA has cost wives their exclusive right to receive alimony *pendente lite*, counsel fees and expenses, and wives have acquired the new "right" to have the court hold them liable to make similar payments to their husbands.

The court again lectured wives on their new marital relationship under the State ERA:

> The sex of citizens of this Commonwealth is no longer a permissible factor in the determination of their legal rights and legal responsibilities. The law will not impose different benefits or different burdens upon the members of a society based on the fact that they may be man or woman . . . . The right of support depends not upon the sex of the petitioner but rather upon need in view of the relative financial circumstances of the parties.

This decision puts the Pennsylvania Supreme Court's imprimatur on the notion that, under ERA, the only wives who can claim support from their husbands are indigent wives.

42. 458 Pa. 97, 327 A. 2d 60 (1974).

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In *Conway v. Dana,*[43] the Pennsylvania Supreme Court invalidated under the State ERA the statute that placed the primary duty of support for a minor child on the father. The court stated that this

> presumption is clearly a vestige of the past and incompatible with the present recognition of equality of the sexes. The law must not be reluctant to remain abreast with the development of society and should unhesitatingly discard former doctrines that embody concepts that have since been discredited.

Again, the court gave its views on how the marital relationship should be structured: "Support, as every other duty encompassed in the role of parenthood, is the equal responsibility of both mother and father." Note that the court did not say that the *duties* of parents are equal; the court said that *"every" duty* of parenthood is the "equal responsibility of both mother and father." One wonders how the court would equalize "every" duty of parenthood.

In any event, under *Conway* and the State ERA, wives have now lost their right to have their husbands provide the primary support for their minor children, and wives have acquired the new "right" to be equally liable for the financial support of their children.

In *Commonwealth ex rel. Spriggs v. Carson,*[44] the Pennsylvania Supreme Court put fathers and mothers on an equal footing in regard to child custody. The court called the "tender years" doctrine (under which mothers were presumed to be entitled to custody of their children of "tender years") "offensive to the concept of the equality of the sexes which we have embraced as a constitutional principle within this jurisdiction."

So, under the State ERA, mothers have lost the presumption that they should have custody of their children.

In *Adoption of Walker,*[45] the Pennsylvania Supreme Court extended to unwed fathers the requirement for consent to

43. 456 Pa. 536, 318 A. 2d 324 (1974); the Maryland ERA had a similar effect in *Rand v. Rand,* 280 Md. 508, 374 A. 2d 900 (1977).

44. 470 Pa. 270, 368 A. 2d 635 (1977). Although the issue was raised sua sponte by Justice Nix, the Pennsylvania Superior Court held his opinion controlling when the issue was properly raised by the parties in *McGowan v. McGowan,* 248 Pa. Super. Ct. 41, 374 A. 2d 1306 (1977).

45. 468 Pa. 165, 360 A. 2d 603 (1976).

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adoption of their illegitimate children. The court held that the State ERA invalidated Section 411 of the Adoption Act which provided: "In the case of an illegitimate child, the consent [to adoption] of the mother only shall be necessary." The court held that this distinction between unwed mothers and unwed fathers is "patently invalid" under the State ERA.

The result of this decision is that an unmarried girl or woman, who is pregnant and wants to place her baby with loving adoptive parents so she can start a new life, will not be able to complete adoption proceedings unless she first identifies the father and secures his consent to adoption. This could be a great injustice to an especially vulnerable woman, invade her right to privacy, or induce her to have an abortion rather than have to identify the father.

In *Hopkins v. Blanco*,[46] the Pennsylvania Supreme Court extended the right to recover damages for loss of consortium to wives as well as husbands. ERA proponents claim that this is a gain for women under a State ERA since, under common law, this right belonged to husbands only. But the proof that ERA is not necessary to extend the right of consortium to wives is the fact that courts in non-ERA states have come to the same decision under the Equal Protection Clause. Among the numerous non-ERA states that have extended the right of consortium to wives are Arkansas,[47] California,[48] Delaware,[49] Georgia,[50] Iowa,[51] Michigan,[52] Mississippi,[53] Missouri,[54] Nebraska,[55] New Jersey,[56] New York,[57] Ohio,[58] Oregon,[59] Rhode Island,[60] and South Dakota.[61]

46. 457 Pa. 90, 320 A. 2d 139 (1974).
47. *Mo. Pac. Transp. Co. v. Miller*, 227 Ark. 351, 299 S. W. 2d 41 (1957).
48. *Gist v. French*, 136 Cal. App. 2d 247, 288 P. 2d 1003 (1955).
49. *Stenta v. Leblang*, 55 Del. 181, 185 A. 2d 759 (1962).
50. *Brown v. Georgia Tennessee Coaches, Inc.*, 88 Ga. App. 519, 77 S. E. 2d 24 (1953).
51. *Acuff v. Schmit*, 248 Iowa 272, 78 N. W. 2d 480 (1956).
52. *Owen v. Illinois Baking Corp.*, 260 F. Supp. 820 (1966); *Montgomery v. Stephan*, 359 Mich. 33, 101 N. W. 2d 480 (1956).
53. *Delta Chevrolet Co. v. Waid*, 211 Miss. 256, 51 So. 2d 443 (1951).
54. *Manley v. Horton*, 414 S. W. 2d 254 (1967).
55. *Cooney v. Moomaw*, 109 F. Supp. 448 (1953).
56. *Ekalo v. Constructive Services Corp. of America*, 46 N. J. 82, 215 A. 2d 1 (1965).

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Colorado is a State ERA state. The legislature was not satisfied with the failure of the court to impose an absolute standard in a felony nonsupport case[62] and so accomplished the task legislatively by neuterizing the statute. Whereas the Colorado statute formerly obligated "man" to support "wife," the new law now reads "person" must support "spouse," which is not the same thing at all. Now a wife shares equally in the obligation to support her family under the threat of criminal conviction of a class-five felony.[63]

The other State ERA states, New Mexico and Hawaii, have had almost no family law litigation in which the courts have interpreted the State ERA.

State Funding For Abortions

One lawsuit in Hawaii, however, is worthy of mention. On January 19, 1978, the Hawaii Right to Life brought suit against the State of Hawaii to enjoin the state from funding elective abortions. Two abortion doctors moved to intervene, alleging that they have a legal right to reimbursement for the performance of elective abortions. They alleged in their petition that this right to reimbursement rests on Hawaii's State ERA:

> Applicant's first claim to reimbursement as a matter of right rests on the Hawaii Constitution's guarantees of due process and equal protection and Article 1, Sec. 21 which provides that "equality of rights under the law shall not be denied or abridged by the state on account of sex." Abortion is a medical procedure performed only for women; withdrawing funding for abortions while continuing to reimburse other medical procedures sought by both sexes or only by men would be tantamount to a denial of equal rights on account of sex.[64]

57. *Millington v. Southeastern Elevator Co.*, 22 N. Y. 2d 498, 239 N. E. 2d 897, 293 N. Y. S. 2d 305 (1968).
58. *Clouston v. Remlinger Oldsmobile Cadillac, Inc.*, 22 Ohio St. 65, 258 N. E. 2d 230 (1970).
59. *Smith v. Smith*, 205 Or. 286, 287 P. 2d 572 (1955).
60. *Mariani v. Nanni*, 95 R. I. 153, 185 A. 2d 119 (1962).
61. *Hoekstra v. Helgeland*, 78 S. D. 82, 98 N. W. 2d 669 (1959).
62. *People v. Elliott*, 186 Colo. 65, 525 P. 2d 457 (1974).
63. Colo. Rev. Sta. §14-6-101.
64. *Hawaii Right to Life, Inc. v. Chang et al.*, Civ. No. 53567 (1st Civ. 1978); Motion to Intervene by Goto and Spangler, at 7.

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The judge denied the motion of the abortionists, but he did not address the ERA argument.

Interestingly, one of the attorneys for the intervenors was Judy Levin of the Reproductive Freedom Project of the American Civil Liberties Union in New York. This claim obviously reflects the argument which abortion lawyers will use in litigation under State and Federal ERAs. Abortion has already been legalized under *Roe v. Wade*.[65] The State or Federal ERA may give a constitutionally-based claim to government-funded abortions, which is not a right under our existing Constitution.[66]

The cases in which a State ERA was at issue make it clear that any benefit to the woman could have been gained just as easily under the Equal Protection Clause. Where the ERA made a unique constitutional difference, it always resulted in a loss to the woman, especially to the wife and mother. In nearly every case in which the State ERA changed prior law, women were needlessly deprived of longstanding legal rights.

* * * * * *

Turning now to the purported ERA state constitutions which do not have authentic Federal ERA-type language, the cases reveal an entirely different pattern. Courts in those states simply do not employ the absolute standard used in Pennsylvania and Maryland. Where the court uses equal protection analysis, the results are not significantly different from those that would be obtained under the Fourteenth Amendment.

Thus, in *Cooper v. Cooper*,[67] the court held that the Texas ERA was not violated by an unequal division of community property and child support obligations favoring the wife upon divorce. In *Friedman v. Friedman*,[68] the court held that the obligation to support children does not require mathematically equal contributions from both parents and that the care provided by the mother should be considered as well as money.

65. 410 U.S. 113 (1973).

66. *Beal v. Doe*, 432 U.S. 438 (1977); *Maher v. Roe*, 432 U.S. 464 (1977); *Poelker v. Doe*, 432 U.S. 519 (1977).

67. 513 S. W. 2d 229 (Tex. Civ. App. – Houston 1st Dist. 1974, no writ).

68. 521 S. W. 2d 111 (Tex. Civ. App. – Houston 14th Dist. 1975, no writ).

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Illinois, an Equal Protection rather than an ERA State, has had a similar experience. In *Randolph v. Dean,*[69] the court held that the presumption favoring a mother's custody of her children may be constitutionally considered as one factor among several.

The Virginia Supreme Court specifically held that the State ERA is "no broader than the equal protection clause of the Fourteenth Amendment to the Constitution of the United States." In *Archer v. Mayes*, the court said ". . . women are still regarded as the center of the home and family life and they are charged with certain responsibilities in the care of the home and children."[70]

The Louisiana Supreme Court uses the rational relationship test interpreting its so-called State ERA. In *State v. Barton,*[71] the court held that a state criminal neglect statute applicable only against husbands is valid under the Louisiana Constitution.

In sum, therefore, the Equal Protection Clause is more than adequate to eliminate obsolete and unjust discriminations and more just, because it allows rational classifications based on the obvious physical differences and differing family responsibilities of women and men. In the states where the so-called State ERA is really just a variation of the Equal Protection Clause, wives have not lost their traditional rights.

In the six states which have an authentic State ERA, however, the courts are using an absolutist standard of review, and the result is indeed "painful" for wives and mothers. The authentic State ERAs provide guidance for what Section 1 of the Federal ERA would require on a nationwide basis. The result would indeed be "far-reaching" in its assault on the traditional family and "painful" in its deprivation of longstanding rights of wives and mothers.

Effect On Same-Sex Marriage

Whether persons of the same sex have a right to be issued a marriage license is a question which has been considered several times in recent years under state statutes and under the Four-

69. 27 Ill. App. 3d 913, 327 N. E. 2d 473 (1975).
70. 213 Va. 633, 194 S. E. 2d 707 (1973).
71. La., 315 So. 2d 289 (1975).

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teenth Amendment. In *Baker v. Nelson,*[72] the Minnesota court held that the prohibition against same-sex marriage does not offend the Equal Protection Clause, because "there is no irrational or invidious discrimination."

Singer v. Hara[73] is the only case on record in which the right of homosexuals to marry was asserted under a State ERA. The Washington state court held that a denial of a marriage license to persons of the same sex does not violate the State ERA. In upholding the state's action in denying a marriage license to persons of the same sex, the court used four arguments:

(a) The court stated that it is "obvious" that a marriage is "the legal union of one man and one woman" and that conclusion is the clear implication of state statutes. But this begs the question. The question is not what the statutes mean, but whether the statutes are constitutional under the State ERA. The court ignored the fact that the whole thrust of ERA is to remove sex classifications. The customary technique for doing this — the method massively urged by ERA proponents in all legislative and judicial contexts — is to delete the so-called sexist words such as man and woman from the statutes, replacing them with sex-neutral words such as person, taxpayer, and spouse.

(b) The court relied on its beliefs about the intent of the people in approving the State ERA: "We do not believe that approval of the ERA by the people of this state reflects any intention upon their part to offer couples involved in same-sex relationships the protection of our marriage laws." The evidence which the court relied on for this conclusion is, to say the least, inconclusive.

(c) The court held against the same-sex appellants because they "have failed to make a showing that they are somehow being treated differently by the state than they would be if they were females." But the truth of this statement depends on the pronoun "they." Although the case is called *Singer v. Hara*, the appellants were Singer and Barwick, two males. The court is correct that "they" (appellants Singer and Barwick,

72. 291 Minn. 310, 191 N. W. 2d 185 (1971), *appeal dismissed*, 409 U.S. 810 (1972).

73. 11 Wash. App. 247, 522 P. 2d 1187 (1974).

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both males) were not treated differently from the way the state would have treated them if "they" had been two females applying for a marriage license. But if Singer alone had brought the case, the court could not have made the above statement because Singer, a male, in applying for a marriage license to marry Barwick, a male, was treated very differently indeed from the way he would have been treated if he had been a female applying for a license to marry Barwick, a male. Likewise, if Barwick had brought the case. Did Singer lose because he brought the case with Barwick instead of alone?

(d) Finally, the court argued that "the refusal of the state to authorize same-sex marriage results from such impossibility of reproduction rather than from an invidious discrimination 'on account of sex,'" That is true, but this traditional view of marriage is anathema to the ERA absolutists who want to use ERA to eliminate all vestiges of what they call "sex role determinism in the law." Furthermore, the state does not prohibit the marriage of heterosexuals who expect to remain childless.

Those opposed to the granting of marriage licenses to homosexuals can rejoice that the Washington state court upheld the traditional view of marriage against attack under a State ERA. But it is clear that the arguments used by the court are simply not compatible with the arguments by courts to invalidate other statutes under State ERAs. The *Singer* decision is out of touch with the absolutism enforced by other courts when rights are asserted under a State ERA. It is easy to see how courts in other states could reject the reasoning of *Singer* and come to the opposite conclusion. And there is no reason to believe that the federal courts will feel in any way bound by the *Singer* court.

In litigating under the Federal ERA, the homosexuals will not only have the plain meaning of the language in their favor, but also the legislative history. Senator Sam J. Ervin, Jr., proposed an amendment to the Federal ERA, which stated: "Neither the United States nor any state shall make any legal distinction between the rights and responsibilities of male and female persons unless such distinction is based on physiological or functional differences between them."[74] This modifying

74. 118 Cong. Rec. 9538 (1972).

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clause that would have exempted same-sex marriages from the Federal ERA mandate was soundly defeated.

Before the effect of ERA on homosexual marriages became so publicly controversial, many ERA proponents were quite open in predicting that ERA would require that marriage licenses be issued to persons of the same sex. For example, Rita Hauser, United States representative to the United Nations Human Rights Commission, stated in her address on ERA to the American Bar Association Annual Meeting in St. Louis in August 1970: "I also believe that the proposed Amendment, if adopted, would void the legal requirement or practice of the states' limiting marriage, which is a legal right, to partners of different sexes."[75] An article in the *Yale Law Journal* candidly stated the case for this effect of ERA:

> A statute or administrative policy which permits a man to marry a woman, subject to certain regulatory restrictions, but categorically denies him the right to marry another man clearly entails a classification along sexual lines. . . . The stringent requirements of the proposed Equal Rights Amendment argue strongly for . . . granting marriage licenses to homosexual couples who satisfy reasonable and non-discriminatory qualifications.[76]

If the U.S. Supreme Court one day confronts the issue of the asserted right of homosexuals to receive marriage licenses under the Federal ERA, it may come to the conclusion projected by Professor Paul Freund when testifying before the Senate Judiciary Committee: "Indeed, if the law must be as undiscriminating concerning sex as it is toward race, it would follow that laws outlawing wedlock between members of the same sex would be as invalid as laws forbidding miscegenation."[77]

Effect on Massage Parlors

Laspino v. Rizzo[78] opened up a whole new area of rights

75. ABA Symposium on Human Rights 62 (1970).

76. Note, *The Legality of Homosexual Marriage*, 82 Yale L. J. 573, 583 (1972).

77. 118 Cong. Rec. 9564 (1972).

78. *Legal Intelligencer*, Dec. 2 1977, at 1, col. 2 (Phila. County Ct. C. P. 1977); *rev'd and remanded*, Pa. Commw. Ct., 398 A. 2d 1069 (1979), with merits of ERA arguments not reached because lower court was held to have entered summary judgment improperly.

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under a State ERA which was probably unanticipated by those who supported adding it to the state constitution. The court held that Philadelphia's ordinance prohibiting commercial heterosexual massage "is clearly, palpably and plainly unconstitutional on its face, and the plaintiff is entitled to summary judgment as a matter of law." The court's analysis in *Laspino* exactly contradicts the analysis employed by the *Singer* court, discussed above.

This case makes clear the difference between the Equal Protection Clause of the Fourteenth Amendment, which the Philadelphia ordinance did not violate according to the court, and the State ERA, which the ordinance did violate. The court held that "the test for compliance with the ERA should, in the very least, be more stringent than that imposed under the Equal Protection Clause." The court held that the massage-parlor ordinance was "invalid as violative" of the State ERA, regardless of whether the "absolute standard" or the "compelling state interest standard" was used.

The ordinance treated men and women exactly alike. The court admitted that it was "facially neutral with respect to gender, since it applies with like discrimination to both males and females in declaring that heterosexual massage is illegal." The ordinance read: " No person employed or engaged in the business of a masseur or a masseuse shall treat a person of the opposite sex." Thus, neither males nor females were discriminated against. Male masseurs and female masseuses were treated equally. Males being massaged and females being massaged were treated equally.

The court tackled this gender neutrality head-on and asserted, "However mere equal application among the members of the class defined by legislation does not satisfy compelling state interest analysis," citing *Loving v. Virginia.*[79] The court went on to say:

> This utilization of gender as the exclusive basis for distinction is impermissible under the absolute constitutional standard despite the superficial neutrality and equality of opportunity (or the absence thereof) of the ordinance. Equal application does not change the fact that the ordinance varies the treatment to be afforded to two

79. 388 U.S. 1 (1967).

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> otherwise equally-situated persons only on the basis of what sex they may be.

It is not known whether the court was making a play on words with its expression "equality of opportunity." In any event, the result of the decision was surely to provide "equality of opportunity."

Effect on Schools

Two cases in State ERA states have established the new rule that girls must be permitted to compete with boys in all sports, even contact sports such as football.

In *Commonwealth v. Pennsylvania Interscholastic Athletic Association,*[80] the court held unconstitutional under the State ERA a bylaw of the Pennsylvania Interscholastic Athletic Association (PIAA) which prohibited girls from competing against boys in interscholastic competitions. Even though neither of the parties requested it, the court extended its decision to cover football and wrestling. "It is apparent," the court said, "that there can be no valid reason for excepting those two sports from our order in this case."

Granting summary judgment as a matter of law, the court held that the mandate of the State ERA is absolute and must apply to all school sports regardless of any rational arguments that might be presented in behalf of exceptions.

The PIAA had sought to justify its bylaw on the ground that it gave girls "greater opportunities for participation if they compete exclusively with members of their own sex." The PIAA never got its day in court to make its argument.

In *Darrin v. Gould,*[81] the Supreme Court of the State of Washington likewise held that it is sex discrimination under the State ERA to deny girls the right to play on the high school football team. The court cited that "broad, sweeping, mandatory language" of the State ERA that compelled this result.

The argument was made in this case that allowing girls to compete with boys in contact sports such as football will result in boys being allowed to compete on girls' teams, thereby disrupting the girls' athletic programs. The court simply dismissed this as "opinion evidence" or "conjectural evidence"

80. 18 Pa. Commw. Ct. 45, 334 A. 2d 839 (1975).
81. 85 Wash. 2d 859, 540 P. 2d 882 (1975).

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which cannot support a public policy contrary to the State ERA mandate.

One judge concurred reluctantly, "exclusively upon the basis that the result is dictated by the broad and mandatory language" of the State ERA. He questioned whether the people fully contemplated the result, but said that whether the people understood what they did or not, "in sweeping language they embedded the principle of the ERA in our constitution, and it is beyond the authority of this court to modify the people's will. So be it."

Title IX of the Federal Education Amendments of 1972[82] bans discrimination on account of sex in schools and colleges, but makes a number of statutory and regulatory exceptions to the absolute mandate. One of these exemptions is for the contact sports: boxing, wrestling, football, basketball, ice hockey, and rugby. If the Federal ERA is placed in the U.S. Constitution, it will wipe out all statutory and regulatory exceptions under *Marbury v. Madison*: "a law repugnant to the Constitution is void."[83]

Vorchheimer v. School District of Philadelphia[84] raises an interesting question about the tactics of proponents of the absolute standard for enforcement of ERA. The School District of Philadelphia maintains two sex-segregated public high schools as part of an otherwise coeducational, public school system, one called Philadelphia High School for Girls and the other Central High School (for boys). The trial court found as Fact #27 that "The courses offered at Girls are similar and of equal quality to those offered at Central." Susan Vorchheimer brought suit to force the boys' school to admit her.

The fatal defect in her suit, however, was that she brought it under the Equal Protection Clause of the Fourteenth Amendment and under the Equal Education Opportunities Act of 1974, neither of which requires the sex-integration of all schools. The court upheld Philadelphia's right to maintain two voluntary sex-segregated schools. The U.S. Supreme Court, dividing 4 to 4, let this decision stand.

82. Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 (1976).

83. 1 Cranch 137 (1803).

84. 430 U.S. 703 (1977); *see also* 532 F. 2d 880 (1976).

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The mystery is why Susan Vorchheimer did not invoke the Pennsylvania State ERA, under which, using the absolute standard, she certainly would have won. Perhaps Miss Vorchheimer's friends were not yet ready to let the country know that the Equal Rights Amendment will make all single-sex schools unconstitutional – and thereby bring their long tradition of academic excellence to a close in the name of "equal rights."

In contrast to the absolute standard used by Pennsylvania under its State ERA, the courts in the equal-protection states continue to hand down decisions that allow a rational difference of treatment based on sex. Thus, in *Mercer v. North Forest Independent School District,*[85] the Texas Court of Civil Appeals held that the two-tiered approach used by the U.S. Supreme Court in equal protection cases is the proper method by which to judge the Texas so-called ERA. A boy had challenged the constitutionality of public school regulations which restricted the hair length of boys but not girls. The court stated: "We cannot agree with the Supreme Court of Washington that the ERA admits of no exceptions to its prohibition of sex discrimination."

It is clear that the non-ERA states and the equal-protection states will be able to maintain diversity in education and common-sense differences of treatment based on sex. The authentic ERA, State or Federal, will use a constitutional whip to force all schools, classes and school activities, athletics and regulations into the gender-free mold.

Conclusion

The experience of the seventeen states which allegedly have State ERAs provides conclusive proof that ERA is not needed to accomplish any reasonable objective or any objective at all that is beneficial to women. All reasonable and beneficial changes in existing law can be made by the passage or repeal of statutes by Congress or the state legislatures or by the courts' use of the authority of the Equal Protection Clause of the Fourteenth Amendment. In case after case, the federal and state courts, both in ERA and non-ERA states, have used the

85. 538 S. W. 2d 201 (Tex. Civ. App. – Houston 14th Dist. 1976, writ ret'd n.r.e.).

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Equal Protection Clause to invalidate obsolete, unjust discriminations on account of sex or to extend the law to apply to both sexes.

The experience of the State ERAs also shows conclusively that ERA is of no unique value whatsoever to women in the economic sphere. The coverage of federal statutes and executive orders is much broader than that of any ERA, and the remedies through federal agencies and courts are much more extensive. Those who believe that ERA means "equal pay for equal work" or that ERA will result in higher pay, more promotions, and greater job opportunities for women are living in a dream world. The State ERA experience proves that ERA provides no gain for working women.

What are the gains for women under State ERAs? The right of high school girls to play on the boys' football team and the right of men and women to go to heterosexual massage parlors. For that, wives have lost such longstanding rights as the rights to be supported; to have their hospital bills paid for; to be provided with food, clothing, shelter, and other necessaries; to have their minor children supported; and to have the presumption of custody of their children. Wives in EPA states (equal protection states) have not lost any of those rights, nor have wives in non-ERA states.

The experience of the State ERAs is more than adequate to convince us that ERA is unnecessary to achieve any beneficial goal for women or society, unreasonable in its absolute refusal to recognize obvious differences between the sexes, and unwanted in its potential to upset traditional objections to homosexual marriages, massage parlors, government-funded abortions, and other imaginative uses of the term "sex." Since there has been relatively little litigation under the State ERAs, we have so far seen only the tip of the iceberg of the harm ERA can do.

A Federal ERA would not only extend the harm already done in the State ERA states, but it would sex-neuterize all federal laws such as the military draft and combat duty. A Federal ERA would also compel the drastic changes mandated by Section 2 – the enforcement section which has the potential of causing such a massive shift of power from the states to the federal government that the changes accomplished by Section 1 would be dwarfed by comparison.

When the Equal Rights Amendment changes existing law,

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all its unique effects are unreasonable to society or harmful to women. ERA has no uniquely beneficial results.

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Rafshooning the Armageddon: The Selling of SALT

KENNETH L. ADELMAN

"I was just interested in how they were going to make a relation between women and SALT," the female civic leader mused while walking out of the State Department auditorium. She may not have fathomed all that mind-bending stuff about throw-weight, MIRVs, and megatonnage inside, but did grasp the main point. "Now that I've heard them, it sounds like they want us to go out and promote SALT."

Quite right. Like her, some 1,500 to 2,000 bigwigs — business barons, scientific brains, frocked clergy, environmental activists, veteran chiefs, and women — have been treated to the Foggy Bottom rendition, while throngs have taken in the State Department's 1,300 road shows. Those so fortunate have sneaked a preview of all the hoopla, hysteria, and hyperbole designed initially to terrify and then to enthrall the audience. To those not so fortunate: your turn will come. For everyone will have the opportunity of catching this spring and summer's stellar national show: the evolving SALT extravaganza.

Seasoned experts, that handful who have contemplated SALT for years, seem turned off by the whole rigmarole. They evaluate the treaty as not much (at best) and slightly bad (at worst). Their disillusionment reflects a creeping consciousness that SALT has not saved money for either the Americans or the Soviets and is unlikely ever to do so, has not reduced the destructive power of either side and is unlikely ever to do so, and has not enhanced strategic stability — quite the contrary — and is unlikely ever to do so.

But never mind the treaty itself. That's almost beside the point at this stage. For the government's top leaders and their PR minions have spun a tale around the nebulous document, a tale of courageous souls and sinister forces locked in deadly combat with nothing less than the survival of the world at stake. But a tale, alas, with a happy ending.

President Carter squarely faces a supreme challenge for a supreme good. He called securing a SALT treaty "the most difficult task I have assumed — more difficult than being elected President, much more difficult than Camp David." No

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one minimizes the Herculean task. It takes two-thirds of the Senate, of course, to ratify the treaty. Yet, today the Administration could not scrape together a simple majority. The gladiatorial SALT-promoters acknowledge that the road to ratification runs through the hearts and minds of the American people to the Senate. "If we can convince the public on SALT," a top White House aide said, "we'll have no trouble with the Senate."

Here the challenge becomes yet more formidable since "the American people" have neither hearts nor minds when it comes to SALT. Surely no more boring a topic is lavished with such press fanfare as the nits and nats of strategic affairs, written (as it always seems to be) in language simply untranslatable into plain English. The bantering between pro- and anti-SALT forces resembles that between the Biefuscudians and the Lilliputians in *Gulliver's Travels*. But Swift's folks squabbled about which end of the egg to break, something far more concrete than our folks' clashes over whose throw-weight is greater after a third strike. Both the Big-Endians and the Little-Endians based their rival philosophies on the 54th chapter of the *Brundecral*, which must have been more readable than the sixty-odd pages of the SALT treaty.

Fighting Public Apathy

So the obstacles to selling SALT start with one stark reality: few people care a whit about foreign affairs, let alone about SALT *per se*. Gallup came up with seven percent who chose international issues or foreign policy as the nation's "most important problem," a mere tenth of those choosing inflation or unemployment. Because they care little, people read little and know little. This too is borne out; in 1977, for example, over half the public was unaware that the government in Taiwan was not communist and a third ignorant that the government in Peking was.

Even the most erudite scholar and worthy practitioner of diplomacy may be vacuous on security affairs. The eminent George F. Kennan, conceptualizer of "containment" and past U.S. Ambassador to Moscow, cavalierly dismisses defense issues without batting an eye. "I see no merit in organizing a defense of the porno shops in the center of Washington," he quipped one year before advocating that U.S.-Soviet relations be conducted purely, without the dirty military business mud-

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dying up the waters. It apparently escaped his notice that there's little else to conduct. Without its impressive military might, the Soviet Union would be summarily whisked off the world centerstage, dismissed as an economic bust, a cultural brute, and an ideological bore. Khrushchev was off base when boasting that his boys "turn out missiles like sausages." Russia's military brass far outperforms its farmers; their missiles are a lot better than their sausages.

Mr. Kennan is not the only one whose eyes glaze over when strategic issues roll around. Our other foreign affairs superstar, Henry A. Kissinger, shrugged: "What in God's name is strategic superiority? What do you do with it?" If his brilliant mind can't decipher the topic of his ponderous books and his direct responsibilities, what about the minds of us mortal amateurs? No wonder then that a skimpy eight percent of Americans claims to have heard or read "a good deal" about SALT or even that, as of late January 1979, fewer than one-fourth could correctly name the two countries involved in the SALT process.

So herein lies the real challenge rendered up to our government. With finesse, it could conceivably mold those minds, mint those *tabulae rasae*, and market that treaty.

But first, it must tune up the home office, since the SALT minstrels must have proper orchestration. Franklin Roosevelt once cracked that watching the State Department was like watching elephants make love: while everything is done at a high level and all with great commotion, still it takes twenty-two months for anything to happen. He would be pleased to see that pin-striped diplomats can swing into show biz with lightning speed and remarkable professionalism.

The Professional Network

Admittedly, they do not bear the burden alone, as State gets a little help from its friends. The Pentagon, where the SALT theatrics are deemed rather distasteful, chips in when asked. Indeed, the brainy and soft-spoken Harold Brown may take over for Andy Young as the Administration's "point man," at least on this issue. Summons have also gone out to the most unlikely of bureaucratic brethren. The National Endowment for the Humanities — best known for sponsoring poetry readings and underwriting obscure Americana research — has joined the SALT bandwagon. It recently bestowed a grant for the travelling SALT tour. As a sign of its humaneness, however,

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the Endowment stipulates that anti-SALTers share the pulpit with the State Department orators.

But until the White House itself swings into action, SALT's campaign headquarters remain lodged in the bowels of State's bureaucracy. There, five Foreign Service Officers (FSOs) serve as booking agents in what appears to be the humming and smooth operation of "SWIG," which stands for SALT *W*orking *G*roup (the "I" was thrown in to make it into a governmental-sounding acronym). These select five arrange for their Foreign Service colleagues – more than fifty thus far – to hit the rubber-chicken civic club luncheon circuit to spread the good word on SALT.

Before setting forth, however, each must attend what the head SWIGer dubs his "horse-training seminar" used to build up a "stable" of thoroughbred SALT winners. A day and a half is spent learning the thespian arts. Coaches train them in speaking plain English (not diplomatese) and avoiding long and dreary discourses, particularly when poised under glaring TV lights. After careful prepping, each must present a full dress rehearsal to the Department's top PR types. They, in turn, can easily point out the stumbles during the dry run by replaying the videotape taken of the event. If they qualify, the prancers are out of the starting gate on to the Kiwanis and Rotary track across the land.

Once out yonder, they can repeat their bit – four hundred tours by FSOs on SALT consist of some 1,300 separate engagements – and can book yet more acts. The slick, red-white-and-blue State Department booklet, *SALT and American Security* – handed out as a playbill with every performance – ends by telling those who "would like to receive more information about SALT or . . . would like to arrange for a speaker to address your school, church group, or organization, please write to" State's Public Affairs Office.

The media are also tapped heavily, since "exposure" is the overriding goal of those on the road. Local stations not catching a peripatetic diplomat can be accommodated by a "direct line" television system. Here's how it works (though it still seems like magic): a SALT celebrity sits in Foggy Bottom's own videotape studio and answers questions called in by a local TV celebrity. Then the interviewer's own image is superimposed on the tape, so that the home audience views him sitting face-to-face with the SALT expert himself. Five or more such tapes have been cut

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thus far, and they seem to be a smash. For those in the real backwoods, radio interviews are readily prepared; more than one hundred have been aired already.

Tailoring the Message

What's the audience's reaction? Well, before the visits, people are quite confused and ambivalent, not so much on SALT as on the more momentous issues. Americans harbor strong though conflicting passions. On the one hand, they want a halt to the arms race; between two-thirds and three-fourths consistently say they favor an arms limitation accord with the Soviets. On the other, they don't take kindly to Soviet shenanigans; sixty percent considers an agreement with the Russians at this time "too risky" while sixty-four percent is sure that Moscow would cheat in any case.

Underlying this approach-avoidance syndrome is dread that the tide is ebbing for America and flowing for Russia. A slow trickle of doubts about U.S. military might has become a torrent. The number of Americans who consider our military power inferior to that of Russia has increased ten percent over the past four months alone. A scant twelve percent considers us superior today while nearly half believes the Russians have forged ahead. America's newest media star, Teng Hsiao-ping, surely heightened such trepidations by John Foster Dulles-like sermonettes during his smashing U.S. tour. Nonetheless, this is a tricky business, dealing with public perceptions, since they are molded by much more than hard statistical data. Representative Bob Carr, SALT spear-carrier in the House, threw light into such dark recesses when he noted in a committee report "that the important perception is not how the Soviets perceive us but how they perceive us perceiving them." That should have settled the issue.

But somehow it didn't. So State's knights of the road seek to straighten out public perceptions, and they often succeed. "I felt that the Soviets were ahead of the U.S.," said a local civic booster in Jacksonville, Florida. "It's a fear lurking back where you don't want to think about it. It's scary." But then, in the mail, came the invitation to the State Department show. She saw the charts, examined the graphs, heard the hucksterings, spoke directly with the real foreign policymakers, and realized just how flimsy were the so-called threats against Western interests. Her worries were over. "I feel a lot better now,"

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she said after the finale.

Certainly she counts among the Jacksonville crowd, but she still doesn't make it into the golden circle of State's prime target group. "We want to reach the people who have a ripple effect," says one SWIG staffer. These, the ripplers, are treated specially. Some with considerable clout are invited to Washington -- though at their own expense — to sit in State's splendor and rub shoulders with the SALT stars, sometimes Cyrus Vance himself but, more frequently, Paul Warnke, Leslie Gelb, and Marshall Shulman. So far 1,500 to 2,000 citizens have been so honored, usually arriving as part of a special interest group with the presentation tailored to fit their particular concerns. The clerics heard the SALT gospel according to Warnke in a show designed to baptize the innocent in the waters of strategic stability. With the scientists, buzzwords like "encryption of telemetry" were tossed about. Environmentalists learned how nuclear war would be detrimental to preserving our natural beauty.

For influentials unwilling or unable to grace the capital, special conferences are held. Three or four State Department speakers are sent, again usually the heavies, for a half-day or full-day session.

Frequently sponsored by the local Chamber of Commerce, eleven such shows have been staged thus far — only two of which allowed anti-SALT folks time for a presentation — and many more are planned. In February and early March, the troupe is booked in Minnesota, Indiana, Oklahoma, Tennessee, Georgia, and Colorado. If such spots are randomly selected, as the State Department's Public Affairs Office adamantly claims, then the hand of fate is guiding SWIG sagely. For these states all have important and undecided senators. Those from two of the states — Minority Leader Howard Baker (Tenn.) and the respected defense expert, Sam Nunn (Ga.) — may well decide the fate of the treaty.

Curbing the Cold War

It only follows, then, that State cares enough to send the very best, both to the special conferences on tour and to the sessions in the home theater. Paul Warnke — who sallied forth to sell SALT to the mayors at their annual convention in St. Louis — still grants audiences, even after feigning the top appointee's occupational injury of relative poverty and resign-

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ing as Chief SALT Negotiator and head of the Arms Control and Disarmament Agency (ACDA). After honchoing McGovern's foreign policy during the stellar 1972 campaign, he took pen in hand to describe how the U.S. was the worse of the "two apes on the [strategic] treadmill" (even though the Soviets currently outspend the U.S. three-to-one on strategic programs). He entered office under Carter with a goal in mind: to educate the Kremlin in "the real world of strategic nuclear weapons which is that nobody could possibly win." Continuation of the Soviet strategic buildup in virtually all areas – even after Kremlin officials sat across the table from Mr. Warnke for so many hours – may have prompted him to turn his pedagogic talents to educating Americans. So now he harps upon the ability of arms control to curb American programs. Without so much as once mentioning Soviet weapons programs – during the opening remarks of his final official press conference – he chortled, "We are trying, actually, to interfere with programs that might otherwise be completed" – our programs. Surveying his short twenty-two months on the job – during which time the Administration cancelled the B-1 outright, shelved the MX missile deployment for awhile, witnessed countless delays in the Trident submarine construction, and deferred the neutron bomb – one can only stand in awe of his success.

Another regular on the SALT circuit is Ambassador Marshall D. Shulman, Vance's special adviser on Russian matters and formerly head of Columbia University's Russian Institute. Dr. Shulman seems obsessed with Russian obsessions; he tells each audience that the Russians' economy is in shreds and tatters, the Chinese hate them, the eastern Europeans defy them, the Marxist ideology bores them, and the past and future frighten them. Shulman exudes compassion for the Russians. He understands how their aberrant adult behavior stems from infant and adolescent traumas, how their current paranoia flows naturally from suffering repeated invasions through the centuries. But as Harvard University's Russia expert, Richard Pipes, dryly notes, one does not become a huge superpower and a colossal empire – now spanning across eleven time zones – by repeatedly suffering invasions. As Dr. Pipes sees it, Russia has been the rapacious invader as often as the afflicted invadee.

How much does all this ballyhoo cost the taxpayers? The General Accounting Office provides a startling answer. The

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campaign was running up a tab of over $100,000 a month through last December. The two government departments most involved in the effort – State and the Arms Control and Disarmament Agency – spent $595,351 in the last few months of 1978. And that is just the beginning. The campaign will accelerate in 1979.

The SALT Lobby

SALT stars can be found outside government as well. Paul Newman recently joined the campaign, telling one nuclear arms conference in Washington of his shock that "people are not angrier . . . . We are playing with the destruction of the planet." Along with the now-pacified Butch Cassidy riding in for SALT are many of the luminaries of the Social Register – such as Clark Clifford, Charles Yost, Townsend Hoopes, Father Hesburgh, and Sarge Shriver – gathered in "Americans for SALT." This spanking new group mails out kits on the virtues of SALT – containing primarily State Department literature – and instructions on how to send a government SALT-seller to Peoria. Since the Executive Branch is legally barred from lobbying Congress,[1] "Americans for SALT" handles this more blatant end of the business. Its material recommends that local chapters "assign one person to call each Senator's office every two weeks" and frequently visit them in person.

No official link exists between this group and the State Department. But SWIGers readily admit that they rely heavily upon their "NGOs" – non-governmental organizations – and

1. It is true that a federal statute prohibits any and all Executive Branch lobbying. This surely stands as the most frequently and blatantly violated of U.S. laws. The statute (18 USC 1913) is, however, quite explicit in prohibiting federal funds from being "used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other devices intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation . . . whether before or after the introduction of . . . such legislation." The few district court rulings on the law have found that: (a) a government employee may be fired for violating the provisions (not just jailed up to a year and/or fined, as explicitly provided) and (b) interested private parties can bring civil suits into court for alleged violations. The anti-SALT forces may do just that, though the courts may well duck becoming immersed in a skirmish between the other two branches of government, particularly one which impinges upon national security and foreign policy matters.

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one even admitted that liaison with "Americans for SALT" was handled "higher up" in the Department than his own lower-level office. Other "NGOs" are sure to spring up just as spontaneously as, for instance, "Women for SALT," which is now rumored.

Besides the pop SALT literature the Department and allied NGOs disburse, there are the arcane studies drafted for true experts and the Congress. ACDA's most famous (by now infamous) such study is entitled "U.S. and Soviet Strategic Capability Through the Mid-1980's: Comparative Analysis" and is just as dully written. While there is nothing very startling or new about slipshod government studies — the libraries, to say nothing of the dreary, gray internal files, are full of them — this shoddy a study is something exceptional. In testimony before Congress, the Administration's own systems analysis czar on defense issues deemed the study's premises "improper" and "incorrect" in arriving at its highly-touted conclusions. The House Armed Services Committee was even less kind, dismissing the work as "distorted, inaccurate, and misleading."

But this all seems like the Big-Endians and the Little-Endians at it again. The American people could care less about squabbling over the assumptions of an unfathomable study. SALT cannot be sold, nor will it be rejected, on such grounds. Much more is needed.

Scare Tactics

And much more is provided — nothing less than the terrifying specter of massive death and destruction, of total annihilation, of the Armageddon. Fright and devastation work wonders at the box office, from the long-time, leading money-maker, *Gone With the Wind,* to the current winner, *Jaws,* and perhaps the coming number one, *Superman*. Playing the dithyramb of danger is expected to work wonders at the Senate offices as well. Besides, brandishing ghastly images of death and destruction is quite a powerful technique in our society, infatuated as it is with thanatology and afflicted as it has been with a numbing fifteen years of assassinations, war, mass murders and senseless violence.

This has not always been the case. The famous television short of a little girl picking dandelions in a meadow before being blown to smithereens in a mushroom cloud — shown

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during the campaign of '64 to address the merits of Goldwater's foreign policy views – seemed too coarse for our then-tender sensitivities and was yanked off the air.

But it is the case today. Senator John Culver made a positive and powerful impression when reading, during a recent pro-SALT speech, a heartrending letter from a little girl in Hiroshima describing what befell her family that fateful August day. Speaking with a Janis Joplin-like whooping sound, the Senator pinpointed the main problem of the SALT debate: "We have made the central equation too complicated" by riveting attention on treaty "technicalities" and thereby losing "the elementary sense of horror and anguish that is needed to make us see the truth." As indefatigable truth-seeker, the Senator furnishes a major dollop of the needed "horror and anguish" – details of pain akin to burns from boiling oil, of children screaming for their mothers, of scalded babies, and so on, in what has to be the most sickening description this side of Guyana. After so draining his audience with Aristotelian catharsis, Mr. Culver regretfully notes that the anti-SALT forces are overdramatizing their stance. "Despite impassioned opposition from some quarters in this country to the proposed agreement, one must hope that sanity will prevail and SALT II will succeed" were his last audible words before thunderous applause. His colleague, George McGovern, gets to the crux without all the schmaltz: "The alternative to arms control and detente is the bankruptcy and death of civilization."

These SALT champions in Congress replay the increasingly loud, macabre music composed on the other end of Pennsylvania Avenue. Last June in Annapolis, President Carter said rather coolly that the Soviets "can choose either confrontation or cooperation. The United States is adequately prepared to meet either choice." By this year's State of the Union Address, the alternatives had taken on a Boris Karloff tone: "The choice instead is between a world of anarchy and destruction, or a world of cooperation and peace." It was as if the President had just seen the movie hit, *Towering Inferno*, since the Address featured this memorable imagery: "Towering over all this volatile changing world, like a thundercloud in a summer sky, looms the awesome power of nuclear power."

To End All Wars

To be sure, Presidential dramatics to encourage Senate

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ratification of a treaty are nothing new. Woodrow Wilson became a one-man show on the Versailles Treaty — SWIGers not yet being conceived of in his times — and paid the ultimate price for doing so. Though an academician, he too succumbed to an emotional pitch and even played the death tune. His eloquent pronouncements about the "dear ghosts" urging ratification from above invoked the aid of the spirits of young Americans fallen in wars past.

The Carter Administration's "dear ghosts" are those of to-be-fallen Americans in wars future — unless, of course, the treaty is ratified. Secretary Vance last April said that any delays in SALT "increase the dangers of mutual annihilation." Paul Warnke strove to chill the spines of a Philadelphia audience during one SALT tour with these parting remarks: "The consequences of a nuclear exchange are incalculable devastation to our land, our society, and succeeding generations. SALT provides an alternative to that dreadful prospect." The printed material echoes the spoken word: the State Department's *SALT and American Security*, thousands of copies of which are floating around, tells why "in SALT, the stakes are enormous." We should never for a moment recoil from thinking about the unthinkable; we must not

> ignore the awesome consequences of nuclear war. Weapons with intercontinental ranges and previously unimagined explosive power can destroy in minutes what it has taken centuries to build . . . . Without a new agreement we could face . . . a greater risk of the catastrophe of a nuclear war.

Such hysteria finds its way even into the recesses of some military minds. Warnke loves to invoke the name of General Richard Ellis, head of the Strategic Air Command (SAC); the superdove quotes the presumed-superhawk as saying, "To me, the alternatives to a SALT agreement are unacceptable: appeasement, economic exhaustion from an arms race, or nuclear holocaust."

With visions of mushroom clouds dancing in their heads, our leaders offer no explanation of how a SALT treaty with little if any impact on either side's nuclear arsenals can help stave off the Armageddon. If one takes their draconian talk seriously — to give them every benefit of the doubt — then an enraged Kremlin might well order a nuclear bolt out of the blue should the Senate reject SALT. One presumes that their leaders are more sensible than that, or than ours seem to be. As

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the House Armed Services Committee concludes, Senate ratification of SALT II "would not contribute significantly to reducing the prospect of war" nor would Senate rejection "bring the United States and Soviet Union any closer to Armageddon." Indeed, a SALT-less world of tomorrow would be remarkably similar to the SALT-less world of today. When SALT I expired in October 1977, the tide still rolled in, the sun still set, and the earth did not noticeably shake. Clearly, our government's is a preposterous contention.

But an effective one, nonetheless – especially if top billing is given to selling SALT and not to edifying the public. The scare technique, repeated long and hard enough, works. It easily penetrates public consciousness and the media. The newspapers, in fact, lap it up, much as they do any mass murder, rape, or assassination. Even a basically conservative newspaper like *The Chicago Tribune* soon editorializes that the issue of SALT "ought to be clear: it is survival!" It goes on to say, in a most amazing way, that we need to "put aside emotion and petty side issues" (presumably those touching upon "survival") "and face, as coldly and rationally as we can, the real choice to be made." All those for survival, raise your hands.

Newsday, published on Long Island, in an editorial supporting SALT, raises a pertinent point, yet one often ignored in discussions of the treaty's merit, namely that "American graves registration teams had all they could do to retrieve the fewer than 1,000 bodies from the ghastly heaps at Jonestown." After this conceptual breakthrough, the imaginative "Approve-SALT-to-avoid-Jonestown" idea took hold. The Senate's current SALT floor manager, Majority Whip Alan Cranston, explained, "Drawing the line 'between our sanity and the insanity of Guyana' is, at bottom, the reason why I feel so strongly about the need for a sound strategic nuclear arms agreement with the Soviet Union." *The Nation* cut out all such gore to entitle its own editorial, neatly and simply, "SALT for Survival."

A New World Order

Yet, that's what's also captivating about the SALT revue. The story has a happy ending. SALT will succeed. Humanity will survive. The Armageddon will be avoided. The world on the brink of disaster – splitting apart in *Superman* – will be pushed back together. Tara will be rebuilt, the Amityville

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beach reopened.

But SALT promises more than restoration of the old order. For it will usher in a new order, one of kindness, cooperation, and genuine arms control. One of Victoria's Prime Ministers, Lord Melbourne, once dryly remarked that nobody ever did anything foolish except from some high principle, and the SALT rhetoric is adorned with high principles and packed with high hopes.

Secretary of State Vance says SALT "will begin to change the whole character of the [Soviet-American] relationship, put it on the right track again." Never mind that the U.S. Ambassador to Moscow, who does his own SALT-selling number around town, dismisses the "naive speculation" by those (like his boss)

> who think that a successful outcome of the SALT negotiation will overnight produce a climate in which all will be sweetness and light in our relations with Moscow. Nothing could be further from reality. Ours is an adversary relation.

Never mind the thirty-odd times, since World War II — after each gala event like a Berlin agreement, Glassboro summit, or SALT I accord — when our leaders have heralded the dawning of a bright new day in Soviet-American relations, only to have darkness fall again. Never mind the judgment of the respected International Institute of Strategic Studies that the very nature of SALT will give "rise to mutual suspicions at least as much as mutual confidence."

Even if a new political order does not unfold, surely a new military order will come in SALT's wake. Nixon and Kissinger sold the old SALT, not so much because of its own miniscule limitations — since SALT I, in fact, the number of Soviet warheads has nearly doubled — but on the prospects of some real, tough arms control measures in SALT II. So Carter and Vance excuse the impotence of the new SALT by peering out, somewhere over the rainbow, to the pot of gold in the form of the future SALT. Thus, SALT III will be a truly momentous agreement, one which will surely begin, as Carter pledged during his Inaugural Address, to "eliminate nuclear weapons from the face of the earth."

Campaign Promises

The new ACDA director, General George M. Seignious,

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has been given this line of wares to peddle. When Warnke bowed out, Carter groped for an arms-consumer to become his key arms-controller (thinking, quite transparently, that this would help market SALT). Two generals turned him down flat while a third – the hapless Seignious, who had recently sponsored an anti-SALT coalition just before being tempted to fame and glory – did accept. Now comfortably ensconced in office, he courageously fights for the treaty. With little to crow about in the provisions themselves, he pinpoints "the importance" of SALT II as "part of a process that any sane person would like to see realized, a process leading to a reduction of strategic arms – and I mean a deep reduction." Some spectators, who forgot all the ballyhoo surrounding SALT I and are unfamiliar with Russia's obsession with military might dating back to Czarist times, might even be suckered in.

And, if the public likes the lure of SALT III, it will love the savings. SALT achieves all this political and military goodness at bargain prices. Nixon and Kissinger blithely placed the savings of SALT I at $12 to $15 billion; Harold Brown solemnly told Congress that SALT II might save $10 billion. Such whopping amounts, however, remain chimerical. No one can locate the money. No one can tell how and where SALT I saved a buck, let alone a billion, nor how SALT II would do so. In a fleeting moment of candor, Warnke admitted that if one wanted to find in SALT II "a saving that you can point to, I think that's going to be hard to do."

Very hard to do, since all the evidence points otherwise. On the Soviet side, the CIA concludes that SALT II "would not, in itself, significantly alter" Soviet military spending; this is predicted to increase by four to five percent annually in real terms over the coming years – much as it has increased steadily over all the hills and gullies of the Cold War, peaceful coexistence, tensions over Vietnam, and detente in the past decades. On the American side, SALT II will, at best, "not substantially reduce U.S. defense expenditures" (according to the House Armed Services Committee) or, at worst, increase allocations to the military; Herbert Scoville, Jr., former high ACDA official and now gung-ho SALT-seller, said that "arms control has become the best excuse for escalating rather than toning down the arms race."

But the President tells us SALT will save money, and surely he can fathom the intricacies of SALT better than we. Shouldn't

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we, as the SALT vendors entreat, trust the President and, above all, not damage the institution? For a defeat of the treaty would rupture this Presidency and wound all future ones.

This, too, is a powerful argument, one striking a responsive chord especially among Republicans who, by inclination and self-interest, savor a strong Presidency. The White House remains, after all, the only feasible path for Republican power in the national arena.

Questions of Leadership

In fact, much of the SALT debate boils down to questions about this President and especially the Office of the Presidency. Much of the underlying motivation is Presidential politics. Mr. Carter and his supporters package their SALT wares in the Presidential Seal, while conservative opponents wrap their anti-SALT stance in the flag.

The spiel about not sinking the Presidency sounds good, but slithers over the fact that the Founding Fathers purposely drew up a Constitution making Senate treaty ratification quite difficult, requiring two-thirds — thereby giving the upper chamber every opportunity to thwart Presidential schemes.

The follow-the-leader price was quite fetching once upon a time. But it falls flat after a succession of incredibly bad Presidential judgments — even on matters of vital national security — from Kennedy's Bay of Pigs to Johnson's and Nixon's Vietnam to Ford's imagined independence of Poland to Carter's New Year's Eve 1977 toast to the "respect, admiration and love which your people give" the Shah in his "island of stability." (It was the next morning, upon departing Tehran, that Carter gushed to the monarch on the Peacock Throne, "I wish you were coming with us.")

Even in the narrower confines of SALT and the strategic nuclear area, the glow of brilliance from our leaders has hardly been blinding. In 1965, sitting right in the Pentagon, Robert Strange McNamara waxed eloquent on how "the Soviets have decided that they have lost the quantitative" strategic arms race and, better still, "are not seeking to engage us in that contest." Lest the audience somehow miss the point, he added, "There is no indication that the Soviets are seeking to develop a strategic nuclear force as large as ours."

Another such victory as this, as King Pyrrhus of Epirus said, and we shall certainly be done for. For now McNamara's

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successor must reckon with a Defense Nuclear Agency study showing the Soviets ahead in thirty-three of the forty-one categories of strategic power. Nor are our intelligence wizards famed for their omniscience. Beginning in the 1960s, the CIA launched a solid decade of *under*estimating the Soviet ICBM buildup, missing the mark by (what we now know were) wide margins.

Credible Sources

So, who can you believe these days? Surely not the SALT showmen, with all their dark portents of the Armageddon (without SALT) and their inspiring visions of terrestrial bliss (with it). Surely not many of the right-wing groups, who have found the denigration of American will- and fire-power to be a booming industry these days.

Scanning the horizon, one is aghast to find that the two beacons of truth on SALT emanate from, of all people, the Soviets and the die-hard American disarmers. Could these be what Isaiah called the "saving remnant" of veracity on the issue? God forbid.

Yet, the Soviets have been most circumspect in their claims for SALT. Moscow holds out no promises of goodness and light following an accord. Indeed, Premier Kosygin became angered last December when he told inquiring U.S. senators in Moscow that SALT would do nothing to limit the Soviets' worldwide activities, to curb their global ambitions. Russian military and strategic writings, in sharp contrast to our own, hardly mention SALT at all. Their strategic planners, unlike ours, appear to expect no more than minor tinkerings in their weapons programs due to SALT. On this score, they have, of course, been right on the mark.

Entering the ring from the opposite corner of the military-obsessed Russians are our fervently anti-military, homegrown disarmers. Giving them, too, their due, one must concede that they, too, are right on the mark with SALT. Admittedly, this crew has a vested interest as it fears that SALT II will give their cherished cause a black eye, much as did the Washington Naval Treaty of the 1920s. They dread that this treaty – heralded by President Carter as "the pride of the country" – will make a mockery of arms limitations agreements, much as the Emperor Caligula made a mockery of the Roman Senate by appointing to it his horse.

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Sidney Lens, movement guru and author of several disarmament-preaching books on strategic affairs, minces no words. "All in all, the SALT II pact is a disaster," he writes in *Progressive*, explaining that "the momentum for escalating, far from abating, will intensify" under its provisions, with political tensions perhaps rising as well. "It will be no loss if the SALT II agreement is rejected," since it is "a long step backward." The Senate's most inspired arms-controller, Republican Mark Hatfield, says SALT II "confuses matters"; it is played up as limiting strategic arms but actually fails to do so, making it thereby harder to achieve "some real and valid [arms control] program. Rather than blindly fall into a SALT II treaty, we had better let SALT II fade out." Hence, Hatfield is one of many senators inclined to vote it down.

If the likes of Sidney Lens and Mark Hatfield — along with far less fervent folk — consider SALT II oversold, overdramatized, and overinflated at this point, just wait until the curtain comes down on the previews and the real pageant opens. Just wait until the gala clicking of champagne glasses during the Carter-Brezhnev summit completing SALT II. Just wait until all the hoopla of the real opening night, when the treaty is formally introduced in the Senate, accompanied by a nationwide Presidential address and uninterrupted theatrics thereafter.[2]

2. As this article went to press, some more interesting data on this subject were just published by *National Security Record* (a newsletter on Congress and National Security Affairs published by The Heritage Foundation). The May 1979 issue includes the following facts and figures.

This is a breakdown of the campaign to approve SALT II waged by the State Department in 1978. The source is an in-house, year-end state-by-state activities report produced by the State Department's Bureau of Public Affairs. It includes only those events arranged by the State Department, or events in which State Department personnel were participants. In 1978 there were 387 Road Trips involving:

539 Live Platform Events (Briefings, Speeches, Town Meetings, etc.);
432 Media Events (Interviews, Radio/TV Talk-Shows, etc.) which occurred on-the-road;
155 Media Events which were "direct line" from Washington D.C.

1126 [This is a total of events for 1978.]

• This means that, on average, one or more officials were on-the-

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Just wait until the real pros take over the show. For the performance thus far has been produced, directed, and acted primarily by the State Department/ACDA bureaucrats who think they know showmanship. They'll soon be put in their place.

Last December, a small item appeared in the local press reporting that Gerald Rafshoon was composing a lengthy and detailed memo for the President, "outlining the public campaign" for SALT. Just wait.

road for SALT each day of 1978. Every day last year — somewhere in the U.S. — there was briefing, speech, or other "live" quasi-function in support of SALT II.

- 1.6 times a day, one or two Administration officials presented the government's pitch for SALT II before Television, Radio, or Print media.
- In only 151 "direct line" TV and Radio interviews from Washington, D.C. (13% of the total number of "events" for 1978) the State Department estimates it reached nearly 5 million viewers and listeners.
- When asked about these figures, one official noted: "If you could see the number of events planned for the week of the announcement (of SALT II) and the week of the signing — well, they make those (1978) figures look like chicken feed."
- Nearly 100 State Department officials have participated directly in the Administration's campaign to approve SALT II. (By contrast, the CIA is reported to have about half as many senior analysts evaluating Soviet strategic programs.) Indirect participation such as staff support, and the involvement of White House or Defense Department personnel, would easily double that number.
- The simple averages presented here are based on a complete year of 365 days. If weekends and/or holidays were excluded, the average number of events could be as high as 3-5 per day.

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The British Election of 1979 and Its Aftermath

KENNETH WATKINS

Will the new Conservative government led by Margaret Thatcher be able to revive the ailing British economy? Will it restore personal initiative and individual freedom to their traditional places in British society? What policies will it pursue in the fields of defense and foreign affairs? An attempt to answer these questions must begin with an assessment of why the electorate returned the Conservatives with a majority of 43 seats over all the other parties combined. Secondly, since those who hold power make the decisions, it is necessary to assess both Margaret Thatcher herself and the Cabinet she has appointed. Next, the likely performance of the new Administration has to be estimated within the framework of the economic situation it has inherited. Only then does it become possible to make suggestions as to the policies it will probably implement in the fields of economics, government-trade union relations, and foreign policy, including defense. Last, but by no means least, it is necessary to try and forecast the changes which will take place inside the defeated Labor Party and the policies which it is likely to pursue.

On polling day, the British people voted against a Labor government that had resulted in economic stagnation. If North Sea oil and gas are left out of the calculation, the economy was producing less than it had five years earlier. The electorate voted in reaction to rising prices and inflation (despite James Callaghan's claim that inflation was under control), to the unemployment of nearly one and one-half million, and to incessant strikes over the redistributive division of a zero-growth national cake. In human terms they voted in reaction to patients not receiving urgent operations and treatment in strike-crippled hospitals, to the uncollected rubbish in the streets of London and other cities, and to the winter's strikes, which had affected bread and water supplies and even sewage disposal. They have voted against growing state interference in their lives and against violence on the picket lines. They voted for a Conservative program that stressed individual freedom, tax cuts aimed at restoring initiative and enterprise, decreases in government expenditure and serious

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attention to the problems of law and order. In so voting, they rejected every *openly* extremist candidate, whether Marxist (communist or Trotskyite) or fascist (National Front), all of whom lost their election deposits and received only a minuscule and derisory number of votes.

The election campaign has been inaccurately reported as having been low-key and boring. Such a view ignores both the issues at stake and the ruthless subtlety with which the debate was conducted. The early draft of the election manifesto which had been submitted to the National Executive Committee of the Labor Party had contained such items as:

- defense budget to be reduced by twenty-five percent over "several years";
- agricultural land to be brought within state ownership;
- nationalization of pharmaceuticals, building materials, and construction;
- a more powerful Price Commission with stronger price controls but no control on wages;
- state funds to change the ownership and balance of the newspaper industry and to "launch new viable publications which cater for minority groups and the labor movement";
- abolition of the House of Lords but no promise of an alternative second chamber.

Such proposals would, if put into practice, go a long way toward making that "irreversible change in British society," which is the proclaimed aim of Wedgwood Benn and other Labor leftists.

The draft was crushed by Callaghan, who led his party into the campaign claiming that inflation was now under control and that his return would lead Britain into an assured era of prosperity. Throughout, he was projected as the avuncular moderate who alone would be able to work peacefully with the trade unions — this despite their rejection during the winter months of the Callaghan/Healey proposal of a five percent wage increase ceiling. Leftists like Tony Benn and Michael Foot were largely kept out of the media limelight and the so-called Labor moderates played the overwhelming public role.

Throughout the campaign, Labor claimed that the Conservative policy of tax and government expenditure cuts would lead to rising prices and increased unemployment. They charged that

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the Conservatives would benefit the rich at the expense of the poor and defenseless. Their appeal, although couched in the most moderate of language, was totally to fear and envy. The class struggles of 1848 were called into service in the election of 1979. Above all, Margaret Thatcher was presented as an extremist right-wing ideologue who would make Senator Barry Goldwater appear to suffer from pinkish deviations.

A most significant feature of the campaign, and one that is of great importance when attempting to analyze future trends, was the number of former Labor Ministers who had held office within the last decade and who urged the electorate to vote Conservative. They included Lord George-Brown (former Deputy Prime Minister and Foreign Secretary), Lord Chalfont (ex-Minister of Defense), Lord Robens and Lord Wilson of Langside. They were joined by, among others, Lord Vaizey, the economist, and Paul Johnson, the former editor of the left-wing *New Statesman*. Theirs was a reaction to the extent to which communists and Trotskyites were now able to influence Labor Party policy as a result of having captured key positions in the trade unions and penetrated local Labor Party organizations. While there have always been a so-called left-wing and right-wing in the British Labor Party, these men felt that the Labor Party of Clement Attlee and Hugh Gaitskell belonged to the past. They feared that a new Callaghan government would act as a door-opener for those who wished to impose an authoritarian collectivist state in Britain. This was the fundamental issue in the election.

For her part, Margaret Thatcher did not lead a united Conservative Party into battle. Indeed, she said that it was her one and only chance and was aware throughout that defeat would lead to loss of the leadership. Although ex-Premier Edward Heath campaigned for the party, he has never been reconciled to his loss of the leadership. There are divisions between those who could be best described as monetarists and those who hanker after a government-legislated wages policy as opposed to a freer operation of market forces. There are those who would like to introduce legislation outlawing the closed shop and those who are fearfully opposed to such a policy. In foreign affairs, there are differences over Rhodesia. A British Prime Minister is not a dictator but leads a government containing conflicting tendencies (rather like an American President). For this reason, the character of the Prime Minister

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has to be considered in relation to the framework within which she has to operate.

The importance of Margaret Thatcher stems not from the fact that she is a woman and one who is both an attorney and the first-ever British Prime Minister with a science degree. Her importance stems from the fact that she has a profound conviction, based on her birth, family upbringing and experience, that a successful free enterprise economy is the only secure basis for individual freedom for even the humblest citizen. She became leader of the party as a result of both Heath's loss of the 1974 election and a growing concern among a substantial number of back-bench Tory M.P.s – but most of all as a result of the party's drift towards corporatism. She inherited a front-bench largely created by Heath and imbued with his views, together with a party organization that, especially at the center, was nervous about any radical change in policy. In the last few years she has been far from enjoying full support, let alone loyalty, in some quarters. Her achievements to date have been the implementation of a radical shift in policy and the winning of the election on that basis. Victory has strengthened her hand for the coming battles.

The New Cabinet

The murder of Airey Neave by the I.R.A. tragically deprived Margaret Thatcher of a man whose wartime heroism was matched by his political astuteness, personal integrity and complete loyalty to her. The key economic appointments in the Cabinet have been given to Sir Geoffrey Howe (Chancellor of the Exchequer), Sir Keith Joseph (Secretary of State for Industry) and Jim Prior (Secretary of State for Employment). The first two can broadly be described as monetarists. Prior, on the other hand, is regarded by some as being "soft" on the closed shop issue and of being overconfident that being on Christian-name terms and having friendly drinks with union leaders will play a major part in improving industrial relations. During the election campaign Margaret Thatcher and Keith Joseph were cast by the unions as the "bogey-men" and Jim Prior as the cosmetic moderate.

A significant appointment is that of the 71 year-old Lord Hailsham to the senior appointment of state, that of Lord Chancellor. For some time now Hailsham has argued publicly that the protection of freedom in Britain necessitates the

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introduction of a British "Bill of Rights," and he can be confidently expected to press this matter. In Lord Carrington there is a Foreign Secretary who is fully alert to Soviet international aspirations. Like him, William Whitelaw (Home Secretary and Deputy Prime Minister) and Francis Pym (Secretary of State for Defense) are intelligent, if pragmatic, politicians. Not the least interesting appointment is that of Peter Walker (Secretary of State for Agriculture); he was formerly Heath's closest political associate. In short, the Cabinet embraces different strands in Conservative thought and interest groups within the party. When (rather than if) "the going gets rough" much will depend on Margaret Thatcher's ability to handle this team. In this connection, it is worth stressing that she starts with the advantage – one that only a few politicians possess – that in twenty years in the House of Commons there has never been the slightest breath of political or personal scandal about her. Her political career has been built on the old-fashioned basis of home, marriage, husband and children. Add to this experience a first-class intellect and deep conviction, and the whole is formidable. But she well may need it all and more.

In the six months prior to the election, retail prices had risen at an annual rate of 10.7 percent and wholesale prices by 12.8 percent. Average earnings rose by 14.2 percent during the 1977-1978 wage round while productivity rose by only 3.2 percent. The tail end of the current round of wage increases, which the Conservatives have inherited from Labor, looks like it will deliver roughly similar increases. Price increases in the cost of all major fuels – gas, electricity, coal and oil – can be predicted to rise by around 11 percent. By delaying tactics and the use of its Price Commission, the Callaghan Administration held the published inflation figure to just under the electorally vital 10 percent figure until polling day. In addition to the inflationary increase already inescapably in the pipeline, there are the forthcoming claims. The teachers are already instituting industrial sanctions. Some civil service unions are putting forward claims for between 18 percent and 30 percent. The local government officers are asking for 24 percent. A number of unions, including the miners, are putting in demands for 30 percent and more this autumn. Whatever the new government does, a 15 percent inflation rate in the coming autumn was its inheritance. All these additional pressures, if yielded to,

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could only drive the economy towards hyper-inflation.

The problem is that the economic policy of the Conservative Party (and its election pledges) will take time to work through the system. There is a declared long-term aim of reducing top rates of taxation on so-called unearned income from the present 98 percent to 60 percent and of cutting an immediate 3 percent of all rates, including the lowest rates on so-called earned income. Part of this can be financed by increasing Value Added Tax (the sales tax) from its present 8 percent up to 10 percent or, more likely, 12 percent.* This could be combined with heavier taxes on petrol, tobacco, beer and spirits. But, even so, in the short-run the figures are unlikely to add up.

Two election pledges have already been kept. On the first day of the new Parliament the pay of the police was increased by 8 percent over the award given by the last government. The next day the pay of the armed forces was similarly increased to give the promised comparability with those in civilian employment. These two measures will add slightly under £200 million to the running expenditure burden, a relatively trivial amount. It would be politically suicidal to reduce the higher tax rates without commensurate measures at the lower end of the scale. It appears that only two policies are open to the government. The first is to print money and in so doing both to go against the new government's proclaimed economic approach and to repeat the Heath experience. The second is to stand and fight. It is at this point that government-trade union relations become central.

Throughout the campaign the unions opposed the Conservatives, politically as well as financially, by providing the Labor Party with its main source of financial support. Given the verdict of the electorate, their posture now, though fairly openly hostile, is one of cautious negotiation. Prior is pushing changes in legislation covering such matters as secret ballots, secondary picketing and compensation for some victims of closed shop restrictions. Neither side seems to be prepared to join battle on the all-important question of the closed shop — the source of union financial muscle and its disciplinary political weapon over its rank-and-file. Yet a large number of union leaders and a very high proportion of militant shop stewards are dedicated to the advent of the collectivist/socialist state.

* (Taxes of course have been cut, and VAT has risen, since this article was written. —Ed.)

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This is the battle which will have to be fought out, and the key will lie in the timing and choice of the battleground as the economic problems unfold in the coming months. One can only pray that the new government will be united in its understanding and then in its actions.

Foreign Policy and Defense

The new Conservative government fully understands the danger arising from international Soviet imperialist expansion. Undoubtedly, it will strive to be a loyal and active member of N.A.T.O. Its pay award to the armed forces will certainly be followed by increased defense expenditure on hardware and further improvements for both officers and men. The key question will be whether economic recovery can provide the necessary finance. Again, this points to the overriding task of defeating Marxist confrontation and disruption in industry. Unquestionably, Moscow sees the struggles as interrelated. It is to be hoped that the British government will be equally clear-minded.

Rhodesia will pose a particularly difficult problem. Many Conservatives would favor the lifting of sanctions now that black majority rule has been achieved with Bishop Muzorewa as the next Prime Minister. However, there will be strong opposition from the Labor Opposition, demanding the inclusion of the so-called Patriotic Front as a condition for recognition of the changes in Rhodesia, even though they are fully aware of Nkomo's and Mugabe's connections with the "socialist" world and their disdain for the electoral process. More important, the Conservatives will be subject to heavy pressure from Nigeria and will be anxious to avoid a crisis at the Commonwealth Conference, which is scheduled to take place at Lusaka in August. Not least, they will wish to go in tandem with President Carter (and Andrew Young). The recent overwhelming expression of support for the newly-elected government of Zimbabwe-Rhodesia by the U.S. Senate will strengthen the Prime Minister's hand. However, it is highly unlikely that the British government will make any quick and unilateral decision.

Traditionally, the Labor Party has always moved leftwards in posture and propaganda after losing an election. However, on returning to office, the moderate majority in the Parliamentary Labor Party has governed from a left-of-center position

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irrespective of any extremist resolutions that might have been adopted at Labor Party Conferences. This experience is most unlikely to be repeated.

During the last decade the Labor Party has ceased to be a mass organization in the localities. Its local committees have tended to become gerontocracies. This has left the local organizations open to penetration and capture by Trotskyites and their allies and to influence exerted by communists as a result of their hold on local trade union organizations.

Without question, the traditional Social Democrats will continue bravely in their efforts to maintain the principles and traditions of the past. It is unlikely that they will be successful. Callaghan, at the age of 67, declared both before and after the election result that he would soldier on. But an intelligent gambler would already make a substantial wager that "Farmer Jim" will retire to the Sussex countryside within eighteen months. Already Tony Benn has declined to stand for a seat in the Opposition Shadow Cabinet and has retired to the back-benches of the House of Commons to give himself more tactical flexibility. The succession battle is already on. In the coming months others will start to lay down markers.

Anyone who believes that the election of Margaret Thatcher is an occasion for euphoria and that the battle for freedom has been won is living in a fantasy world. On the contrary, the battle is about to begin. It can be argued that it is the last opportunity for the Conservatives. If Margaret Thatcher fails, the door in Britain will be open for the headlong plunge to disaster in the form of the irreversible socialist state. If she wins, and win she can, she will have made a major contribution to the restoration of Britain's fortunes and, in so doing, will inscribe her name in the history books as one who will have led the way not only for her own country but for the entire Western world.

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The Elected European Parliament

JURGEN SCHWARZ

On June 7, 8 and 10 the European Parliament, the assembly and legislative branch of the nine-nation European Community (EC), was elected for the first time. About 180 million Europeans had the opportunity to participate in the direct election of 410 members of the European Parliament and to mark an historic milestone in the organization of western Europe.

Despite the parliament's present lack of real legislative power and some campaign apathy, both supporters and critics of this legislative assembly think that the election can be seen as an important and decisive step toward establishing a more effective international governmental system in western Europe. The election could psychologically unite the millions of voters of different nations and revitalize interest and support for a still growing European Community.

Supporters see the parliament within the traditional constitutional framework of a national or international federative union. Having had generally good experience with the legislative and controlling power of national assemblies, they hope to transfer national parliamentary functions to international government organizations such as the European Community. They see the parliament as the constitutional cornerstone and the elections as a breakthrough in the European nation-building process. So, their main goal will be to strengthen the legislative power of the European Parliament and to extend its political competence. A first step in that direction was already taken: electing the members of the assembly democratically by direct ballot. Supporters believe that the European Parliament's opinion and resolutions will carry much more weight after this election and will even be able to influence the decisions of the governments of the member-nations. Obviously, they are thinking in terms of a national political system.

To date European Community policy on everything within the framework of the treaties of Rome (March 25, 1957), from agriculture to trade to economic guidelines and currency control, is decided in summit meetings by the leaders of the European Community nations and by councils of the nations' responsible Cabinet ministers. Their decisions are carried out by the European Community Commission (ECC), whose members have been appointed

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until now by the Council of Ministers and its steadily growing bureaucracy in Brussels, the executive body of the European Community. Although the ECC has the right to initiate decisions and to propose political questions for the Council of Ministers to decide, the Council is still the most powerful body. The Council makes its decisions not by majority rule but by consensus, thus demonstrating that it consists of really independent and sovereign member-nations. The Council of Ministers also deals with political problems outside the treaties of Rome and beyond the competence of the ECC, such as foreign affairs and defense.

The European Parliament, whose members have been appointed until now by the political parties and factions of the national parliaments, has only the power to dismiss the entire 13-member European Community Commission, which will then be reappointed by the Council of Ministers. To date the European Parliament has only consulting and a few controlling rights. It has the power to oversee the European Community's activities, to order that its budget be held down to the previous year's level, to consult with the Council of Ministers on its decisions and to vote on opinion resolutions. It has no deciding power beyond the articles of the treaty.

The critics of the European election doubt whether the European Parliament will be able to strengthen its power decisively, and judge the further functions of the European assembly as marginal. They by no means oppose a legislative and controlling body of the community, but they think this central task cannot be carried out by the international European Parliament. The European Parliament might have important opinion- and consciousness-forming tasks within the process of building the European Community, but the real political power to decide and to control should stay with the Council of Ministers or with the European Council.

From the critics' point of view the European Community, in the present situation, is not and will not become a federation, but is rather a confederation, a loose cooperation of independent nation-states. Therefore, they consider it impossible to transfer institutions from the national to the international level. They believe that creating international cooperative structures requires real innovation rather than just imitation of traditional, national decision-making systems.

The crucial question at the moment concerns not the establishment of the European Parliament but the ongoing cooperation of the member-nations in view of the increasingly heterogenous ele-

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ments introduced by the so-called second extension of the European Community: the admittance of Greece, Spain and Portugal to the Common Market. In the future it will be more difficult to make a decision by consensus, but it will be impossible to find a solution by majority rule. Considering the increasing importance of national contributions, this will even mean a declining role for the European Parliament.

Each of the four largest European Community countries—Britain (with 40 million voters), France (37 million), Italy (39 million) and the Federal Republic of Germany (45 million)—has 81 seats in the newly elected parliament. The Netherlands (9.4 million voters) has 25 seats, Belgium (7 million) 24, Denmark (3.6 million) 16, Ireland (1.8 million) 15 and Luxembourg (0.2 million) 6 seats.

The Results of the Election

The results of the European elections are as follows: Belgium (24 seats): Christian Social Party, 10; Socialists, 7; Liberals, 4; Party of the French Speaking, 2; and the Flemish People's Union (Volksunie), 1. Voting is compulsory in Belgium. The voter turnout was 81 percent, against 93 percent in the last national elections.

Denmark (16 seats): Movement against the EC, 4; Social Democrats, 3; Conservatives, 2; Liberals, 3; others, 4. The winners of the election are ironically the opponents of the European Community, the so-called anti-Europeans.

France (81 seats): Giscardists (Liberals, of President Giscard d'Estaing), 25; Socialists, 22; Communists, 19; and Gaullists (of Jacques Chirac), 15. Without question this was a decisive defeat of the Gaullists and a clear victory for the Giscardists, both parties competing to lead the French government. The campaigning was intense in France. As in other European countries the parties used the race to gauge their strength in preparation for the next national elections. But the voter turnout was only 60 percent, against 82.8 percent in last year's election.

Germany (Federal Republic, 81 seats): Christian Democratic Union, 34 (including 2 from Berlin); Christian Social Union (only in the state of Bavaria), 8; Social Democrats, 35 (including 1 from Berlin); Free Democrats, 4. The two parties forming the coalition for the government of Helmut Schmidt won only 39 seats, against the 42 seats of the opposition parties. The voter turnout was 63 percent against 90.7 percent in the last national elections.

Great Britain (81 seats): Conservatives, 60; Labor Party, 17; Scot-

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tish Nationalists, 1; North Irish Unionists (Protestants), 2; and North Irish Catholic Social Democratic Labor Party, 1. This was a second great victory of the Conservative Party within five weeks, and a bitter defeat for the Labor Party. The Liberals won no seats. The turnout was 32 percent, against 76 percent in national elections—the lowest of all European countries. About 47 percent of the British population is against membership in the European Community. Only 40 percent think Britain should stay with the EC.

Ireland (15 seats): Fianna Fail (right center), 6; Fine Gael (conservatives), 4; Labor Party, 3; and others, 2. The voter turnout was 58 percent, against 77.2 percent in the last national elections.

Italy (81 seats): Christian Democrats, 30 seats; Communists, 24; Socialists, 9; Radical Rights (MSI), 4; Social Democrats, 4; and others, 10. The Christian Democrats lost 1.8 percent compared with their 38.3 percent win in this year's national elections. The Communists lost 0.8 percent, from 30.4 to 29.6 percent of all votes. Winners were the conservative Liberals, the Socialists and the Social Democrats. The voter turnout was 86 percent (95.3 percent in the national election), the highest in all European countries.

Luxembourg (6 seats): Christian Social People's Party, 3; Democratic Party (Liberals), 2; and Socialist Labor Party, 1. The voter turnout was 85 percent, against 90.1 percent in the national elections on the same day.

The Netherlands (25 seats): Christian Democrats, 10; Labor Party, 9; Liberal Rights, 4; and Liberal Lefts, 2. The Socialists lost their position as the strongest party in the country. They won 30.9 percent of all votes; the Christian Democrats won 35.5 percent. The voter turnout was 58 percent, against 87.3 percent in the last national elections.

About 120 million voters participated in the first European elections. The 65 percent turnout was low for European countries. The majority of voters is skeptical about the future competence, political power and functioning of the European Parliament.

Of the 410 members of the new European Parliament, 112 members will be Socialists, forming the strongest faction; 105, Christian Democrats; 63, Conservatives; 44, Communists; 41, Liberals; 21, Progressive European Democrats (French RPR and Irish Fianna Fail); and 24, other parties. There is a clear plurality of Christian Democrats and Conservatives. The Europeans did not make history electing the new European Parliament, as Edward Heath suggested, but did indicate that a hopeful majority supports the ongoing process of building the European Community.

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Europe's Continental Congress

OTTO VON HABSBURG

Between June 7th and 10th,* the nine countries of the European Economic Community (EEC) will elect the first genuine European parliament. One hundred eighty-one million Europeans will determine the fate not only of their own countries, but perhaps of the whole continent.

The claim that a nine-country parliament constitutes a Continental Congress might sound presumptuous, particularly to the non-participating governments. Nevertheless, as long as the new parliament recognizes itself as a starting point, it can be the political base for tomorrow's Europe, just as the thirteen colonies provided the base for the United States of today. As people grasp what is really at stake, public interest in the European parliament is rising.

Europe will be different after June 10th. The inveterate pessimists who presume that nothing will come of the European parliament are being as unrealistic as those who assume we shall have a European Constitution at the end of its five-year term. The leader of the European Christian Democrats, former Belgian Prime Minister Leo Tindemans, was right when he said that the elections would be a qualitative step into a new dimension. The evolution of Europe will be accelerated by the particular conditions of our times.

In economics, the Common Market has succeeded past all expectations and has now reached the limits of its abilities. It cannot develop the initiatives needed to cope with the serious problems concerning energy, petroleum, raw materials, and unemployment policies. The Common Market cannot enjoy new growth without a political element – which the elections will supply.

Security considerations are even more important than these economic matters. Despite the claims of detente and peaceful coexistence, we are living in a period of grave tensions, caused by the imperialistic policy of the Soviet Union. By escalating

* This article was written before the election took place. Dr. von Habsburg was elected as a Member from the Federal Republic of Germany.

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its armament efforts, the U.S.S.R. compels other nations to do likewise. And the communist takeovers in Angola and Mozambique belie the claims of naive politicians: the Soviet military preparations are in fact a threat to international peace.

In a period of global decolonization, the U.S.S.R. remains the last great colonial empire. The Russian colonies include not only the eastern European nations yielded to the Kremlin at Yalta, but also, more importantly, Siberia and Soviet Central Asia. People too often forget that the Soviet population east of the Urals is mostly Mongolian or Turkoman, definitely not Russian. In fact, in 1970 the Russians made up only 53 percent of the Soviet population; with their low birth rate (they use more coffins than cradles) and the high natality of the Asiatics, they are likely to be a minority within their own country before the end of the 1980s. Meanwhile China, the rising Asiatic power, declares its determination to decolonize the area north of the Amur and Ussuri.

To counter this threat, the Soviet Union is obviously interested in "Finlandizing" the European continent. Finland retains the outward trappings of sovereignty, but the Kremlin makes the major domestic decisions; a market economy endures, but the people work mainly in the service of their distant masters. The Kremlin plans a similar fate for western Europe.

Eurocommunism, the Trojan Horse of 1979, is the main instrument of this endeavor. Eurocommunism is an obvious fiction: its leaders declare quite openly that their fundamental program remains unchanged, and Marxism and democracy are mutually exclusive. Furthermore, the Eurocommunists are even more financially dependent on the Soviet Union today than they were in the days of Joseph Stalin. In politics, too, he who pays the orchestra will call the tune.

The main purpose of Eurocommunism is to facilitate the participation of communist parties in the European elections. But since the parties are virtually nonexistent outside France and Italy, in all likelihood the communist faction will be the smallest in the European parliament. Moscow therefore wants to give these parties a certain false respectability, enabling them to form a "popular front" coalition in which the Socialists — more numerous — will be the horse and the Communists — more determined — will be the rider. The prospect is dangerous, since the Socialists, to put it mildly, are quite interested in coalition.

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A Legitimate Basis For European Sovereignty

One often hears the argument that the European parliament has no formal powers and is consequently meaningless. But history shows that parliaments never have power until they are elected, and this European parliament will already have certain notable competencies. The EEC's former representative body had obtained authority over its own budget (thanks to the pressure of Conservatives and Christian Democrats); hence, the parliament is already vested with financial power. Moreover, the parliament has the right to investigate the administration, even passing a motion of "no confidence" against that body.

However, the central significance of the European parliament will lie in its democratic legitimacy. Hitherto, all delegates in European institutions were appointed by and, consequently, dependent on their national authorities. The new European parliament will be elected directly by the people. The national governments, unsure about the continued validity of their sovereignty rights, will be unable to dominate this new body. We shall witness a transfer of authority, more extensive than currently visualized, from the national to the European institutions.

From the beginning, two main issues will lead to a confrontation between the socialist and non-socialist forces in the European parliament. The first is the question of federalism or centralization. When the parliament drafts a new European Election Law, if the Socialists and their allies succeed in imposing national proportional representation, centralism will have won; adoption of the Anglo-American system, however, would be a clear choice in favor of federalism. The second main issue is "freedom or socialism." True, the parliament will not yet have legislative powers in this field. Nevertheless, motions carried there will greatly influence the national governments. The Socialist program opens the way for the Eurocommunist operation. While the Socialists claim to keep the Communists at arm's length, the Conservatives and Christian Democrats are termed the main "enemy." The resulting polarization, evident today even in a relatively moderate country like West Germany, is bound to affect the European parliament.

The Socialists, to their credit, were the first to realize the importance of the coming elections. Years ago, the Socialist International established a special office in Luxembourg to deal with the question. Mr. Sicco Mansholt of the Netherlands,

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praised by Willy Brandt as the brain behind the Socialist strategy, is a centralizer, a technocrat. His main goal is to create an all-pervading bureaucracy. In his system individualism plays only a subordinate role, if it plays any role at all.

The Socialist programs aim to replace the present European social order: the European parliament would be used as an instrument for changing society. To this end, the program seeks control of investments and co-determination via the unions in virtually every field. The trade unions, which have developed into a political-economic feudal force, will send their strongest men into the parliament. Their purpose is to unionize the whole economy, without passing unpopular nationalization laws.

Decolonization In Eastern Europe

Besides the Socialists, there are three forces: the Conservatives, the Christian Democrats, and the Liberals (most of whom are "classical" liberals). At present they all agree in their rejection of the Socialist plan, although certain Christian Democrats are wavering. In this situation, the recent success of the British Conservatives will strengthen those who oppose Socialism.

One central issue, as strange as it may seem, will be the definition assigned to the word "Europe." In the Socialist camp in general, there is a more or less avowed readiness to limit the notion to western Europe. The nations of central and eastern Europe are usually ignored, and European reunification is not mentioned. Christian Democrats, particularly those of Bavaria, believe that western Europe should use every peaceful means to promote self-determination for the nations behind the Iron Curtain. Most Christian Democrats want the eventual liberation of the continent: decolonization should not stop with Africa and Asia, but should include the Old World.

The chances for such a solution are not bad. Under growing pressure from the Far East, the Soviet Union is entering a difficult phase. Whenever the master diplomat, Ceausescu of Rumania, wants to expand his area of independence, he brings in the Chinese. And despite dire predictions, the Kremlin usually backs down.

The time has come for Europe to establish a strong, outward-looking unity in the West, not forgetting the European nations under Soviet occupation. Such a policy would assure international peace, since history proves that aggressors only strike when they see weakness on the other side. Thus, one can

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realistically hope that all nations of Europe will eventually unite into a strong continent, a faithful ally of the United States, guaranteeing that the "World Revolution" planned by Moscow will not take place.

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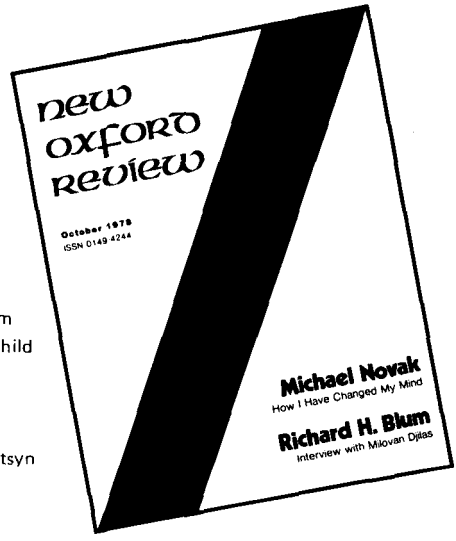

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The Tax Reform Fraud

PAUL CRAIG ROBERTS AND RICHARD E. WAGNER

The growth of government is widely explained as a response to constituent demands for programs. Many economists see government as an agent for maximizing social welfare. In this view, government grows because the public wants it, and the growth of government expands the social welfare. Other economists believe that government grows by responding to demands from special interests rather than from the public. In this view, the growth of government is the growth of special interests. These explanations share the view that government is a passive agent that merely responds to demands. In contrast, we offer an explanation of tax reform that takes into account the self-interest of government itself. In this view, public policy also serves the private interests of the policymakers.

How does one define the self-interest of government? To an important extent, public officials can further their self-interests by increasing the power of government. Power maximization does not necessarily mean that government will maximize its revenue. Revenue maximization may result in a government that is large in absolute size, but small relative to the size of the economy. Power maximization may result in a smaller economy that produces less tax revenue, but in which the government is the source of a greater share of income and exercises greater control over the allocation of resources. Government, then, might rationally forego revenue maximization and adopt tax policies which result in government activity replacing private activity.

Government, of course, is not completely free of constraints on its ability to maximize its power, but at the same time it is not wholly constrained by the wishes of its constituents. It is often suggested that competition between political parties constrains politicians in the same way that market competition constrains firms. While such similarities are readily apparent, it is easy to exaggerate their extent. McCormick and Tollison show that incumbents regardless of party can be looked upon as forming a cartel to secure special advantage.[1] The expected

1. See Robert E. McCormick and Robert D. Tollison, "Legislatures as Unions," *Journal of Political Economy* 86, February 1978, pp. 63-79.

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gains from the pursuit of power result in risk-taking. Those who take risks and lose are out of the game, but their departure does not result in a reduction in the power of government — only in a reduction in their personal power. Conversely, increments to power gained by successful risk-takers accumulate in government. In a democracy, power resides in the office and not in the person. A person increases his power by increasing the power of his office, and that power remains after the person is gone.

Tax reform has been explained in terms of maximizing revenue, enhancing economic efficiency, achieving equity, and promoting social welfare. We offer a different view and explain tax reform as a means of strengthening the power of government. Tax reformers propose to expand the tax base by taxing fringe benefits and eliminating deductions and the distinction between capital and income. It is easy to show that the arguments used to support tax reform are false. How, then, should the tax reform movement be understood? As a well-intentioned movement that is simply misinformed or as an attempt to expand the power of government?

The Government's Stake in Tax Reform

Like most "reforms" that increase the power of government, "tax reform" is advanced under moral and populist guises. Tax reformers claim that their purpose is to help the poor by closing "loopholes" that allegedly allow the rich to avoid paying their fair share of taxes. They attempt to create the impression that the tax system is biased in favor of the well-to-do, particularly those whose income results from previous acts of saving and capital formation. The tax reform literature quite clearly conveys the normative proposition that the tax burdens borne by people with above-average incomes and by people who own capital assets should increase, because at present such people are unfairly escaping the tax collector.

"Tax expenditures" have been defined by tax reformers as another name for tax loopholes.[2] These loopholes include an array of fringe benefits, itemized deductions, and exemptions from income that tax reformers claim is equivalent to the expenditure of public funds. Tax reform, then, assumes the

2. For a general survey of tax expenditures, see Richard E. Wagner, *The Tax Expenditure Budget: An Exercise in Fiscal Impressionism* (Washington: Tax Foundation, forthcoming).

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guise of getting public expenditures under control. But, each "reform" would add to the power of government even though it may be inconsistent with revenue maximization.[3]

The taxation of fringe benefits would discourage these benefits from being privately supplied, while also creating a demand for these benefits to be provided by government. Such taxation is, in other words, consistent with the power maximization view of government. Economists have generally concluded that the utility of a dollar of in-cash income exceeds that of a dollar of in-kind income. Fringe benefits owe their presence to their non-taxability. The relevant comparison is between a dollar of non-taxed in-kind income and less than a dollar of taxed in-cash income. Taxation of fringe benefits — medical insurance, for example — could reasonably be expected to produce a substitution of money income for employer-provided medical insurance, thus strengthening the demand for national health programs.

Eliminating itemized deductions can also produce a greater demand for government programs. Eliminating the itemized deduction for medical insurance and medical expenses is a way of raising the cost to the individual of privately-provided health services, thereby strengthening the demand for government-supplied health services. Eliminating the itemized deduction for home mortgage interest is a way of raising the cost of private housing which, in turn, would induce a greater demand for government housing programs. Eliminating the itemized deduction for state gasoline taxes and interest on installment credit is a way of raising the cost of privately-provided transportation, thereby increasing the market for government-supplied mass transit.

Expansions in the share of income that is provided in-kind by government will strengthen the power of government. It seems obvious that, from the standpoint of self-interest,

3. According to Senator Russell Long and Roger Baldwin, Chairman of the Securities Industry Association, raising capital gains tax rates reduces the government's revenue from the tax, and lowering it increases the revenue. Various studies seem to support this contention. For example, National Bureau of Economic Research Working Paper No. 250, "The Effects of Taxation on the Selling of Corporate Stock and the Realization of Gains," by Martin Feldstein, Joel Slemrod, and Shlomo Yitzhaki, concludes that a reduction in capital gains tax rates would substantially increase the revenues produced by the tax.

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government has an incentive to tax fringe benefits. The claims of tax reformers, such as Donald C. Lubick, Assistant Secretary of the Treasury for Tax Policy, that the taxation of fringe benefits is motivated by the government's concern about equity and economic efficiency should, therefore, be treated skeptically.[4]

The elimination of the distinction between income and capital allows the imposition of a wealth or asset tax. If saving is not exempt from the income tax, saving is taxed twice as heavily as consumption. The way to get less of anything is, of course, to tax it. Discouraging wealth, or encouraging current consumption, means less capital formation and less economic growth. Slower economic growth and an increasingly static economy mean a slowing of the growth in productivity, real wages, and private sector job opportunities. As the growth of private sector job opportunities declines relative to the growth of the labor force, there is a greater constituency for public service employment. The decline in the growth in real wages results in a larger constituency for income redistribution. As the economy becomes more static, the ease with which the government can control it increases. In a variety of respects, then, a tax on saving and wealth expands the power of government and shrinks the power of the private sector.

The effort to eliminate the distinction between income and capital centers around the capital gains tax. With inflation, real rates of tax on capital gains have exceeded one hundred percent. The taxation of nominal gains greatly increases the effective tax rates on real, price-adjusted gains. In spite of large nominal gains, people may actually receive less in real terms from the sale of an asset than they paid. Reporting in *The Wall Street Journal* (July 27, 1978) on the results of his empirical studies, Martin Feldstein stated that:

> . . . during the last decade, effective tax rates have increased dramatically on capital gains, on interest income and on the direct returns to investment in plant and equipment. Investors in stocks and bonds now pay tax rates of nearly 100 percent – and in many cases more than 100 percent – on their real returns.

Fortunately for free men, not every Member of Congress

4. See Lubick's testimony before the Task Force on Employee Fringe Benefits of the House Ways and Means Committee, August 14, 1978.

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understands the connection between a wealth tax and government power or, alternatively, some Members of Congress still reflect the interests of constituents who wish to prevent the confiscation of their assets. Not every Member of Congress is a tax reformer, but if any U.S. Treasury has been the preserve of tax reformers, the current one is. Perhaps this explains the frantic disinformation campaign led by the Treasury once it seemed that the Congress would restore capital gains taxation to the pre-1969 level.[5] The Treasury pulled out all stops and will never regain any credibility among economists and Members of Congress who are not its allies. As Congressman Steiger politely put it, "Our President has been given misleading economic statistics."[6]

Increasing the progressivity of the income tax also leads to a reduction in privately-generated income and to a reduction in the rate of savings and economic growth, especially when nominal income gains are taxed and inflation is moving taxpayers into higher brackets. As marginal tax rates increase, the relative price of leisure in terms of foregone current incomes falls, and so does the relative price of current consumption in terms of foregone future income. In other words, as marginal tax rates rise, people substitute leisure for current income, and they substitute current consumption for savings or future income. The effect of reforms which increase progressivity is the reduction of the growth of the private sector, thereby generating opportunities and demands for the expansion of government.

Tax policy is used for a similar purpose at the lower end of the income distribution where the work disincentives of high marginal tax rates have been used to trap millions of people in welfare dependencies. Martin Anderson has shown that marginal tax rates increase most sharply between $4,000 and $8,000 of income. Anderson finds it "hard to believe we did this on purpose — that we intentionally saddled with the highest rate of increase in the marginal tax rate that part of our labor force perhaps most sensitive to disincentives."[7] But what alternative explanation is there? Economic

5. See, for example, Donald C. Lubick's letter to the *New York Times*, July 22, 1978; and W. Michael Blumenthal's testimony before the Senate Subcommittee on Taxation and Debt Management, June 28, 1978.
6. As cited by Roger Baldwin, *New York Times*, August 7, 1978.
7. Martin Anderson, "The Roller-Coaster Income Tax," *The Public*

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stupidity on the part of the various parties seems quite implausible. It is far more plausible that this structure of marginal tax rates was chosen because some people in government believed it promoted their interest. While the pattern Anderson detected is difficult to fathom if one believes government acts to maximize the public interest, it is quite consistent with the view that government works to maximize its interest. Whether intentional or accidental, welfare dependencies are consistent with power maximization by government. The efforts of this Administration to extend welfare handouts into the middle class are also consistent with the power-maximizing hypothesis.

Ludicrous Treasury Arguments

To support the penalization of savings and capital formation, an action that enhances the power of government, some ludicrous economic arguments have been advanced by the Treasury and the Congressional Budget Office. These arguments suggest that the effects of policy and tax rates on incentives and supply can be disregarded. In standard Keynesian economics, which provides the rationale for government economic policy, fiscal policy affects only demand. A reduction in personal income tax rates, for example, is assumed to affect only disposable income and spending. The Treasury and the CBO assume no incentive or disincentive effects of tax rate changes on labor supply or on savings and investment. Thus, they have been able to oppose tax reductions on the grounds that they lose revenues and worsen the deficit.

Hard pressed to defend their position, the Treasury finally replied on August 17, 1978, in an appendix to Secretary Blumenthals's plea for tax reform before the Senate Finance Committee. In this reply to critics, the Treasury simultaneously claims (1) that it takes the supply-side effects into account, (2) that "there are presently no economic models that fully incorporate supply effects," and (3) that supply-side effects don't exist. So the Treasury takes into account supply-side effects even though they have no way of measuring them and even though they don't exist!

The Treasury statement denies the existence of supply-side

Interest, Winter 1978, p. 27. More generally, see Martin Anderson, *Welfare* (Stanford University: Hoover Institution Press, 1978).

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effects in the following way: "Even across the board cuts in tax rates do not bring about significant changes in relative prices." However, a change in the rate of tax on income is most certainly a relative price change. It changes the relative price of leisure in terms of foregone current income and the relative price of current consumption in terms of foregone future income. Therefore, it affects at the margin the choices between leisure and current income and between current consumption and future income. A tax rate change obviously affects both labor supply and savings.

Prior to asserting that relative prices are not affected by tax rate changes, the Treasury introduced a fall-back position:

> In the case of induced labor supply even the direction of change is at issue. Historically, there has been a tendency, as incomes have increased, for the average worker to work shorter hours and to retire at an earlier age. When taxes on labor income are reduced, the positive responses to higher after-tax earnings will be offset, perhaps completely, by this tendency to take some of the increased potential earnings in the form of increased leisure.

What the Treasury is saying here is that tax rate changes do affect relative prices, but in two ways; they have a substitution effect and an income effect. The Treasury is saying that a reduction in the rate of income tax will induce people to substitute current income for leisure, which increases labor supply. But the income effect, they are saying, will work in the opposite direction. Since the tax reduction provides more after-tax income, people may respond to the change by working less and enjoying more leisure. These two effects work in opposite directions; the substitution effect will cause an increase in labor supply, while the income effect will cause a decrease in it.

The Treasury's argument, which is the same as the CBO's, is, of course, incorrect.[8] Perhaps the Treasury confuses the income effect of a productivity change, which produces more real income in the aggregate, with the income effect of a relative price change, which does not in itself produce more aggregate real income. The Treasury's statement overlooks what the economics profession has known since the 1930s, which is

8. See Paul Craig Roberts, "The Breakdown of the Keynesian Model," *The Public Interest*, Summer 1978.

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that in the absence of bizarre distributional effects, the income effects of the relative price change wash out, leaving only the substitution effects, which unambiguously increase labor supply. There can be no aggregate income effect from a relative price change unless the incentive effect, which the Treasury denied, exists and raises real aggregate income. It apparently never occurred to the Treasury that if people respond to tax cuts by working less, the Keynesian fiscal policy that they are defending will not work either. It seems that the Treasury has gone out on a limb in its efforts to deny that after-tax rates of return affect work effort, savings, investment, and the supply of goods and services. But, if the Treasury can succeed in misleading people who are not informed on these matters, it can continue to produce incorrect revenue estimates and to advocate tax policies that maximize the power of government.

The "reasonable man" might respond to our perspective on tax reform by treating it as an interesting, hypothetical explanation. It can be made to appear this way, he might say, but the explanation assumes too much rationality behind government policy. Besides, tax reformers talk about equity, helping the poor, and making the rich pay, not about the power of government. Today a reasonable man must show some cynicism, and he may say that tax reformers are out to redistribute income, but not to establish leviathan. Although economists are quite content to understand self-interest in the private sector as expected rational behavior, they become uncomfortable when the self-interest hypothesis is applied to the government sector. They rebel and say that explanations of government behavior in terms of self-interest implies that the government is in the hands of devious men and, although that might be true of a government headed by Richard Nixon, it is not true of any other. Only the private sector, they say, is in the hands of devious men. In other words, the behavioral assumption made by economists — that people in the private sector serve their own interests, but people in government serve everyone's interests but their own — is a dichotomy. Tax reformers may be muddle-headed, the reasonable man may say, but they are not devious.

Claims Versus the Facts

Let's then look at the arguments of tax reformers in their own terms. Consider the main charges they make:

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- The effective corporate tax rate is far below the statutory rate. By avoiding taxes through loopholes, wealthy corporations are paying a declining share of the total tax burden, thus increasing the burden on the little man.
- The rich don't pay income taxes.
- Poor and middle-income taxpayers are taxed on all their income while upper-bracket money escapes through loopholes and deductions.
- The federal tax burden as a percentage of income has remained constant for years, while the share of this burden borne by lower income taxpayers has been increasing.

What are the facts? The U.S. Commerce Department's National Income and Product Accounts show that the effective tax rate on real corporate profits has been higher than the statutory rate for the past decade, reaching almost one hundred percent in 1974. Table I summarizes what official government statistics show the tax rates to be for the years 1968-76.[9] The

Table I

Year	Inflation Rate (CPI)	Effective Tax Rate*
1968	4.7%	54%
1969	6.1	60
1970	5.5	65
1971	3.4	62
1972	3.4	58
1973	8.8	64
1974	12.2	96
1975	7.0	73
1976	4.8	67
1977	6.8	66

*U.S. tax liability as a percentage of domestic corporate profits, with inventory and tax depreciation allowances adjusted for replacement costs.

Source: Bureau of Economic Analysis, U.S. Department of Commerce.

9. Notice that the effective tax rates go up and down with inflation. This is because inflation overstates profits by causing company books based on historical costs to understate the true cost of replacing the plant, equipment, and inventory that are used up in production. As a result, part of what the books show as net revenues, which are subject to tax, represents the understatement of the companies' costs. In this way,

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effective tax rates in the table were obtained by adjusting inventory and existing tax depreciation allowances for replacement costs. Tax reformers will be quick to point out that existing depreciation schedules contain accelerated write-offs that they claim compensate for inflation. To adjust accelerated depreciation schedules for replacement costs, they will say, is to compensate twice for the effect of inflation, thus exaggerating the rise in the effective tax rate. The trouble with this argument is that firms are able to use the accelerated schedules regardless of the rate of change in the price level. Consequently, an increase in inflation still results in the understatement of depreciation compared with what the real value of depreciation would otherwise have been.

Table II presents an alternative calculation based on historical straightline depreciation without the accelerated elements in the current code. These effective tax rates are not as high as the

Table II

Year	Federal	Federal, State and Local*
1968	33.3%	37.6%
1969	42.6	46.3
1970	45.6	50.7
1971	39.4	44.3
1972	40.1	45.6
1973	38.1	44.2
1974	45.0	52.0
1975	62.4	72.5
1976	41.4	48.7
1977	51.8	58.8

*Based on adjusted economic profits equal to National Income and Product Accounts profits less an adjustment to the capital consumption allowance adjustment implied by the new Securities and Exchange Commission replacement cost data. The added annual adjustment equals 100 percent of the old adjustment.

Source: Based on Joint Economic Committee, 1978 Annual Report.

ones that firms actually experience. However, they show the same result: inflation has raised effective rates over the past decade. For the first five years of the decade, the average

inflation converts costs into taxable income, thereby increasing the effective tax rate on corporate profit.

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effective federal tax rate was 40.2 percent. For the second five, it was 47.7 percent – an 18.6 percent increase in the average rate of tax. If state and local taxes are included, the average effective tax rate increases from 44.9 percent to 55.2 percent – a 23 percent increase.

Corporate income tax receipts are declining as a percentage of total tax receipts, but not because corporations are avoiding taxes. The simple fact is that corporate profits have fallen as a percentage of total income. Since corporate income is a declining share of total income, it is only natural that corporate income taxes are declining as a percentage of total income taxes. Table III shows corporate profits as a percentage of the national income. In a decade, corporate profits have declined

Table III

Year	Corporate Profits as a Percent of National Income
1966	13.3%
1967	12.0
1968	12.0
1969	10.6
1970	8.5
1971	9.0
1972	9.6
1973	9.0
1974	7.4
1975	8.2
1976	9.4
1977	9.2

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

Note: The measure shown is corporate profits before tax with inventory valuation and capital consumption adjustments as a percentage of national income (*Economic Indicators*, March 1978, p. 4).

from over 13 percent of the national income to just over 9 percent.

Table IV shows the distribution of the personal income tax burden. The top ten percent of taxpayers pays almost 50

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Table IV

Percentage of Total Taxes Paid by High- and Low-Income Taxpayers, 1970 and 1975

Adjusted Gross Income Class	Income Level		Percentage of Tax Paid	
	1970	1975	1970	1975
Highest 1 percent	$43,249 or more	$59,338 or more	17.6	18.7
Highest 5 percent	20,867 or more	29,272 or more	34.1	36.6
Highest 10 percent	16,965 or more	23,420 or more	45.0	48.7
Highest 25 percent	11,467 or more	15,898 or more	68.3	72.0
Highest 50 percent	6,919 or more	8,931 or more	89.7	92.9
Lowest 50 percent	6,918 or less	8,930 or less	10.3	7.1
Lowest 25 percent	3,157 or less	4,044 or less	.9	.4
Lowest 10 percent	1,259 or less	1,527 or less	.1	.1

Source: Tax Foundation computations based on Internal Revenue Service's Statistics of Income.

percent of personal income taxes collected. The top 50 percent paid 92.9 percent of the total personal income taxes in 1975. The data show that the income tax burden is shifting away from lower income people. In 1970, the bottom 50 percent of taxpayers paid 10.3 percent of the personal income taxes. By 1975 this figure had declined to 7.1 and, as Table V shows, to 6.7 percent in 1976. The 1978 legislation maintained this trend, for it has been estimated that 79 percent of the tax reduction will accrue to the top 50 percent of taxpayers. Since the top 50 percent was already paying 93 percent of the taxes, it will be paying an even greater share after 1978; maintenance of the pattern of distribution would have required that the top 50 percent receive 93 percent of the tax reduction. Progressivity has been increased still further by the 1978 legislation.

In 1975, for every $1 in personal income taxes paid by the bottom ten percent of taxpayers, the top one percent paid $187. In spite of shelters and deductions, higher income taxpayers pay disproportionately high shares of the total income tax burden. Treasury figures show that in 1976 the top 1.4 percent of the taxpayers with incomes of $50,000 or more received 10.7 percent of the income and paid 23 percent

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of the income taxes. The top 0.3 percent with incomes of $100,000 or more received 4.5 percent of the income and paid 10.5 percent of the income taxes.

Table V, which shows that the average tax burden of the taxpayers in the lower 50 percent of the distribution was $224 in 1976, puts a new light on the Administration's proposal to replace the $750 personal exemption with a $240 tax credit.

Table V

Percentage of Total Taxes Paid by High- and Low-Income Taxpayers, 1971 and 1976

Adjusted Gross Income Class	Income Level		Percentage of Tax Paid		Average Tax	
	1971	1976	1971	1976	1971	1976
Highest 10 percent	$18,034 or more	$24,971 or more	46.5	49.9	$5,324	$8,378
Highest 25 percent	12,125 or more	17,292 or more	70.0	72.3	3,208	4,857
Highest 50 percent	7,292 or more	9,561 or more	91.1	93.3	2,086	3,133
Lowest 50 percent	7,291 or less	9,560 or less	8.9	6.7	205	224
Lowest 25 percent	3,291 or less	4,372 or less	0.7	0.6	34	39
Lowest 10 percent	1,270 or less	1,707 or less	(a)	(a)	2	3

(a) Less than 0.1 percent.

Source: Tax Foundation computations based on Internal Revenue Service Statistics of Income.

The credit would have added millions of people to those who were dropped from the tax-paying rolls as a result of legislative changes during the 1970s and would have reduced still further the share of personal income taxes paid by the lower 50 percent. The switch to a credit from the personal exemption would lower the income taxes paid by lower income taxpayers, while leaving many other taxpayers to face higher marginal rates. Loss of the personal exemption would increase taxable income and, depending on the number of exemptions and the width of the relevant bracket, push taxpayers into higher rate brackets.[10]

The proposal for a credit is consistent with observed government behavior which, with millions of people dropped from the tax rolls and with half the taxpayers paying only six percent

10. On this point, see the 1978 Report of the Joint Economic Committee, U.S. Congress, House Report No. 95-995, pp. 112-14.

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of the personal income taxes, has resulted in representation without taxation, something that long ago was recognized as a problem for democracy.[11] The situation in which one group is forced to give up large amounts of its income to the government and another group is dependent on the government for its income seems consistent with the power maximization hypothesis, but hardly with any of the public interest views of government.

Tax reformers point out that upper-income taxpayers receive a disproportionate share of "tax expenditures" or "loophole" benefits. They do not point out that these same people also pay a disproportionate share of the income taxes. Upper income taxpayers are not getting rich through loopholes. Actually, 70 percent of the "tax expenditures" go to people with incomes of $50,000 or less. Tax reformers commonly emphasize loopholes that conjure up visions of elaborate tax shelters for the rich — special treatment of capital gains, tax-free municipal bonds, percentage depletion for oil, gas, and hard minerals, and accelerated depreciation on housing investments. But the Treasury's loophole list is 69 items long. Let's look at some of these items.

The largest tax expenditure consists of the pension plans that employers provide for their employees. For Fiscal 1978, this is estimated to be a $9.94 billion loophole. If we add in individual pension plans, we have a loophole through which $11.6 billion falls, 80 percent of which went to taxpayers with incomes below $50,000. The second largest "tax expenditure," estimated at $8.5 billion, is the itemized deduction for state and local taxes on items other than real estate and gasoline. Another large loophole is the payments employers make for medical insurance for their employees — $6.34 billion, 71 percent of which went to people making under $30,000 and 87 percent to those making under $50,000.

Two of the Administration's tax reform proposals were to eliminate the itemized deductions for state gasoline taxes and medical expenses, the former of which was enacted. These are hardly upper-income tax shelters. Only 9 percent of the

11. See, for instance, Albert V. Dicey, *Lectures on the Relation Between Law and Public Opinion in England in the Nineteenth Century*, 2nd ed. (London: Macmillan, 1914).

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benefits from the deduction of state gasoline taxes went to people with incomes of $50,000 and more. Sixty-six percent of individual deductions for medical expenses went to people earning under $30,000 and 84 percent went to people with incomes under $50,000. Eliminating these deductions makes little sense in terms of income redistribution, but it makes a lot of sense in terms of raising the costs of privately-supplied transportation and health care, one effect of which will be to strengthen the market for government-supplied alternatives.

Tax reformers do not advertise that Social Security is a $5.2 billion tax loophole. They do not advertise that the exclusions from taxation of military disability pensions, scholarships and fellowships, railroad retirement benefits, disabled coal miners' benefits, veterans' disability compensation, sick pay, GI bill benefits, and unemployment benefits are all "tax expenditures." The tax reformers do not advertise that the percentage difference between adjusted gross income and taxable income is greater the lower the income bracket and that loopholes are the primary income shelters for those in the middle to lower tax brackets. Yet, the Treasury's figures show that the smaller the income, the larger are deductions as a percentage of adjusted gross income. The same is true of fringe benefits, which are a larger percentage of a lower salary than they are of a higher salary.

A new invention called "expanded gross income," which the Treasury uses in place of adjusted gross income to compute the distribution of "tax expenditures," is further evidence of the effort by tax reformers to shape people's perception of the tax system. "Expanded gross income" includes untaxed income such as the excluded part of capital gains. It serves to give the appearance of a lower effective tax rate on the upper brackets and furthers the confounding of capital and income.

Tax reformers seem strongly opposed to closing the greatest loophole of all. This is the loophole which works for the benefit of government by allowing the government to use inflation to increase taxes on constant and even declining levels of purchasing power without having to legislate higher tax rates. Between 1966 and 1976, the average wage rose 77.3 percent, and the consumer price index rose 75.4 percent. So the average worker kept up with inflation, but not with taxes. The total tax burden rose 144 percent during the same period. Because of the progressive structure of the income tax, when people's

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money incomes rise they enter higher tax brackets. The government's revenues do not simply rise at the rate of inflation; they rise 1.6 times as rapidly.

American after-tax incomes have been undone by taxflation. This explains why government prefers to cut taxes in the lower brackets. Inflation soon pushes people into the higher brackets that were not cut. The central issue of tax reform is surely that of closing this loophole. But in their proposal to tax capital gains as ordinary income, the tax reformers show every intention of opening the loophole wider.

By emphasizing that the federal personal income tax take has remained roughly constant as a percentage of personal income for years, at about 10 to 11 percent of personal income, tax reformers imply that the tax burden is not growing. They do not note that this average take is the result of millions of people being pushed into higher tax brackets while millions of others are dropped from the tax rolls. Nor do they note that the total government tax take (state, local and federal tax revenues and federal deficit spending) has increased from 12 percent of national income in 1929 to 33 percent in 1960, and to 41 percent in 1977.

There are other disturbing elements in the tax reform push. For example, every year a great commotion is raised about high income people avoiding taxation. Tax reformers then say that something must be done or people will lose faith in the tax system. The hypocrisy is evident, because the people would not have known without the commotion raised by tax reformers. The purpose of the commotion is, of course, to spread the erroneous impression that the rich do not pay. The Treasury's figures from the Office of Tax Analysis show that in 1976, only 89 out of 53,587 returns showing expanded income over $200,000 paid no tax. That is less than two-tenths of one percent. Does this tiny figure justify generating the impression that the tax system is unfair?

A more ominous development is underway in the tax reform movement. Progressivity is being redefined by congressional staff, Members of Congress, and others. The Kemp-Roth Bill, for example, was said to be a regressive tax cut, because it gave more dollars to upper brackets than to lower. Normally, progressivity is defined in percentage terms. A tax cut is regressive if the percentage cut is greater for upper brackets than for lower brackets, neutral if the percentage is constant

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across brackets, and progressive if the percentage is greater for lower brackets. In terms of the normal definition, the Kemp-Roth Bill is a progressive tax cut. But in congressional debate and in staff memos, it was portrayed as regressive, because more dollars went to the higher brackets where the bulk of taxes are collected.

Ivy-Tower Tax Reformers

Of course, there are tax reformers and then there are tax reformers. Some are simply ivy-tower academics who are in pursuit of their vision of an ideal tax system. Often, this means simplicity and comprehensiveness. These academics are easy to enlist in loophole-closing and in the pursuit of equity. But others who are not ivy-tower idealists are adroit at redefining the concepts being pursued. Equity is being redefined to mean a penalty on ability and success. Fairness is being redefined to mean income redistribution. The tax base is said to be eroded not by high tax rates, but by a rational response to the rates. In his testimony before Ways and Means on August 14, 1978, Donald Lubick used the fact of high tax rates against those who suffer them: "Exempting fringe benefits from tax produces unfairness," he argued, because "the exemption is of greater value to a high-income taxpayer than to a low-income taxpayer." Lubick is using "greater value" in terms of total dollars, not in terms of income percentages.

Tax reformers may reply that rabble-rousing is an unavoidable, and even necessary, component of social progress, but is not a tool used by government to maximize its power. They may claim that they do not mention the loopholes that primarily benefit the middle and lower income taxpayers because they have no intention of closing them. But placement on a "tax expenditure" list is an initial step on the path toward their elimination. Reassurances that only the rich will suffer have proved false in the past. Initially, the personal income tax burden rested on only 357,515 people – less than one-half of 1 percent of the population. Only people with incomes much greater than average were subject to the tax. Only income in excess of $117,000 in 1977 dollars encountered the first surtax bracket of 2 percent. The top tax bracket of 7 percent was encountered only by income in excess of $2.9 million in 1977 dollars. However, the personal income tax soon found its way into the lower brackets. The income thresholds were lowered

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and the tax rates raised. The bottom bracket today, an income level not subject to taxation in 1914, is taxed at 14 percent — twice 1914's top rate. The tax rate today on the first $500 of taxable income is twice as great as the tax rate on a multi-millionaire's income in 1914.

This extension of taxation to lower incomes does not mean that things got better for the millionaire. The rate in his bracket today is ten times greater, and his average tax rate under the schedule is 11.4 times greater. In 1914, the total tax on a million-dollar income was $60,000. Today, it is $685,000. Since, as a result of inflation, the value of money today is only about one-sixth of what it was in 1914, today's millionaire's after-tax income of $315,000 is equivalent to a 1914 purchasing power of $53,800. He has only one-seventeenth of the purchasing power of his 1914 counterpart. It is little wonder that they seek out shelters to lower the effective tax rates. Yet, they are being painted in the public mind as criminals for taking legal protective action.

Income Growth or Income Redistribution?

A characteristic of democratic politics is the use of public policy to create supporting constituencies. Different tax policies mean different patterns of gains and losses for different people. Many people realize that tax reformers seek the support of those who pay little if any tax by heaping even greater burdens upon those who pay most of the tax, but there is more to tax politics than the tax distribution of tax burden among people. It also deals with the distribution of power between government and citizens. Tax reforms strengthen the power of government relative to citizens generally when they destroy private wealth and lead to the creation of income claims that are dependent on government transfers.

When examined at a given point in time, tax legislation seems to deal primarily with the distribution of tax burdens and disposable income. When seen as part of an ongoing social life, however, tax legislation deals primarily with the production and destruction of wealth. For instance, taxes on capital, which appear to deal with the distribution of consumption among people, actually reduce the consumption opportunities available to all.

Savers and investors are the primary benefactors of society. The first two little pigs were clearly better off because the third

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little pig was thrifty and industrious and built a brick house. As Ludwig von Mises put it:

> Every single performance in this ceaseless pursuit of wealth production is based upon the saving and the preparatory work of earlier generations. We are the lucky heirs of our fathers and forefathers whose saving has accumulated the capital goods with the aid of which we are working today. We favorite children of the age of electricity still derive advantage from the original saving of the primitive fishermen, who, in producing the first nets and canoes, devoted a part of their working time to provision for a remoter future. If the sons of these legendary fishermen had worn out these intermediary products — nets and canoes — without replacing them by new ones, they would have consumed capital and the process of saving and capital accumulation would have had to start afresh. We are better off than earlier generations because we are equipped with the capital goods they have accumulated for us.[12]

The effort to promote more equal sharing of economic output by penalizing productive efforts reduces the amount of savings and future production. For a while recipients of redistributed income may gain, but eventually even they lose too as a result of the reduction in economic growth. Many tax reformers would have us playing a negative sum game that benefits only the power brokers in Washington.

Substantial effort under the guise of promoting justice has gone into promoting guilt over economic success, but what the elimination of poverty really requires is a strong dose of middle class values. If the story of "The Three Little Pigs" is cultural imperialism, the more the better. True charity consists in promoting the traits that foster individual success. Nothing but widespread individual success can constrain the power of government.

12. Ludwig von Mises, *Human Action*, 3rd ed. (Chicago: Regnery, 1966) p. 492.

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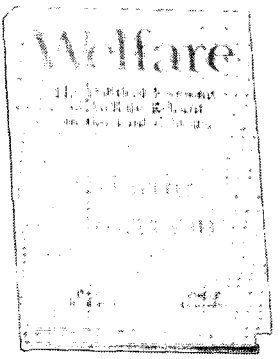

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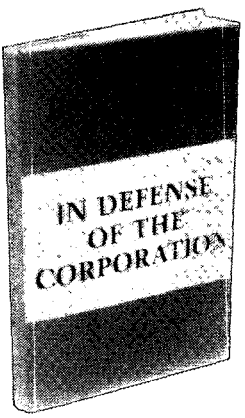

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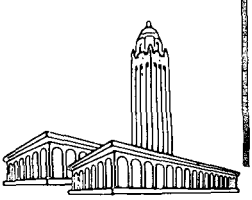

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The New Protectionism, The Welfare State and International Trade
by Professor Melvyn B. Krauss, New York University
an
INTERNATIONAL CENTER FOR ECONOMIC POLICY STUDIES BOOK, (ICEPS)

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There are few concepts so revered in economic tradition, quite independent of ideology, as free trade. Yet the trend today, strongly backed by the labor movement, is to a "new protectionism." In this study, Professor Krauss examines the implications of the increase in restrictions on trade, in particular, non-price barriers that are related to welfare state objectives.

The Boston Evening Globe, January 2, 1979, quotes: "To many people, the great attraction of the welfare state is that it appears to provide high rates of economic growth and social consumption—that is affluence and social justice—but economic growth and social consumption are really competitive, not complementary."

The Wall Street Journal, December 5, 1978: "He (Professor Krauss) finds that the new protectionism differs from the tariff protection of old and is the response of welfare states to problems created by their own existence . . . the welfare state fulfills its commitment to provide security by subsidizing the employment of resources in the low productivity environment that its tax policies have produced. Eventually, the growth in the national product, the only basis for redistribution in the welfare state, is undermined . . .".

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Political Wish-Thinking and the Eurocommunist Myth

EUROCOMMUNISM – IMPLICATIONS FOR EAST AND WEST. *By Roy Godson and Stephen Haseler.* (St. Martin's Press, New York, 1978.)

In moral life and in political life that takes note of some moral principles, there is no single comprehensive principle of wisdom. The wisest maxim, taken as an abstraction independent of historical context, stales with repeated use. It does not become false, but it sometimes blinds us to other truths. No one has expressed with greater felicity than George Santayana the historical truth: "Those who have forgotten the past are doomed to repeat it." But, is it not true that those who have never forgotten the past sometimes, in virtue of living so completely in the past, fail to recognize the future, the element of genuine novelty?

These reflections are suggested by the phenomenon of Eurocommunism discussed in what is indisputably the best book on the subject, *Eurocommunism – Implications for East and West* by Roy Godson and Stephen Haseler, based on a series of background papers by prominent European scholars – Leonard Schapiro, Annie Kriegel, Giuseppe Are, Francois Bourricaud, Rui Machete, and Eusebio Mujal-Leon.

Not so long ago it was widely believed in Western non-communist circles that a new type of communist party had developed in western Europe, especially Italy, France and Spain, whose ideals of a communist society were profoundly different from those operating in the Soviet Union and its eastern European satellites. The difference was conspicuously evidenced by two main ideological reorientations – first, by the declaration of the communist parties that they were no longer engaged "in the conquest of political power," but in a political struggle for power within the presupposition of the democratic process, with full recognition of the rights of political minorities to peacefully become a majority. The French Communist Party at one point declared that it no longer conceived of its rule as "the dictatorship of the proletariat." Bourgeois democracy was no longer a sham, fraud or deceptive facade, but a reality to be defended against totalitarians of other colors and varieties to the death, to be completed, not

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negated, by applying its concepts of representation, participation, and freely-given consent into other areas of social, economic and cultural life. Communism with a face more truly human even than Dubček's Czechoslovakian movement was finally to emerge.

The second reorientation expressed itself in some forthright, even if selective, criticisms of the cultural repressions within the Soviet Union, the Kremlin's cruel treatment of dissenters and advocates of human rights within the Russian borders. Nothing like it had occurred on such a scale before. What Khruschev's speech about Stalin had revealed could be explained away as the temporary aberrations of the personality cult. But after Solzhenitsyn's searing volumes on *The Gulag Archipelago* had been translated, no apologies or denials could be seriously undertaken. And the news that current dissenters were often punished by confinement in insane asylums reinforced the desire to accentuate the difference between a Westernized communist movement, embattled to defend and extend the heritage of freedom, and the communism of the founding communist fathers who had lost some of their humanity — so the rationalization went — in combatting the inhumanity of their opponents.

After the defeat of the French Communist Party and Marchais' attack on the French Socialist Party, the phenomenon of Eurocommunism receded in importance. But, it is periodically revived by the demands of the Italian Communist Party to become an integral part of the democratic coalition regime. It is safe to say that the subject will resume its importance so long as Mitterand remains head of the French Socialist Party in the hope that he can come to political victory in alliance with the rhetorically restrained French Communist Party.

The most frequent question that has been asked about Eurocommunism in the past is whether it is a genuine phenomenon or only a more complex and subtle strategy in the guise of a genuine political democracy.

The majority of reflective observers, especially among democratic socialists, have dismissed Eurocommunism as a new chapter in an old strategem. They had heard talk of this kind by Czechoslovak communists just before they were preparing to push Benes out of power and defenestrate Masaryk. And, although the Kremlin certainly did not enjoy hearing criticisms from the Western communist parties, that was a small price to pay for the unqualified support these parties gave to every

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foreign policy move the Soviet Union made to extend its power everywhere in the world, at the same time as these parties intensified the drumfire of their criticism of American imperialism.

Nonetheless, this kind of response is critically weak. It relies too much on history. It runs the risk of not seeing or appreciating change. If it is possible for fascist governments and political groups to transform themselves from enemies of a democratic system to legal opponents within the system, the possibility of such a transformation of communist parties cannot be ruled out – certainly not by anyone who reflects on the momentous unexpectedness of events in recent history, including recent communist history.

And, it is precisely for this reason that this book by Godson and Haseler is so important and so likely to remain a valuable guide in the coming years. For, although history is not neglected, they offer us primarily an *analysis* of the likelihood of genuine change in the communist parties and of the probable consequences that would follow were the communist parties to enter western European coalition governments on the assurance that they, too, were interested in the defense of human freedom and a free society.

The analysis proceeds from region to region and from country to country. The differences and nuances among the communist parties of Italy, France, Portugal and Spain are not neglected. The authors speak in terms of historical probabilities, not certainties. But, they ask us to look at some basic factors before accepting assurances of communist changes of faith which, in the case of some individuals, are undoubtedly sincere. But, outside of the Soviet Union and Red China, individual leaders of national communist parties have never redetermined policy.

The authors of this volume and their congenial associates ask us to look at the internal structure of the communist parties that are candidates for Eurocommunist reformation. Has "democratic centralism" been truly abandoned? Can a party organized even partly along Leninist lines be trusted if it remains in a state of organizational readiness to reverse course? Further, their analysis suggests that we observe carefully the degree of party penetration into the existing structures of democratic society – the progress of "the long march" through the cultural and educational institutions. Is there any evidence

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of an underground parallel organization for "emergency purposes of course" in the event of a counter-revolutionary democratic movement? And if a communist party "passes" a strict examination on all these questions — how does it really differentiate itself from a left-oriented social democratic party? Why cannot it function as a left wing of existing social democracy parties which tolerate considerable differences in the character of the immediate economic policies necessary to move towards democratic socialism?

Further, were the United States to welcome or even reconcile itself to the possibility of Eurocommunists' holding or sharing power in any major European country, it would tend to demoralize the non-communist opposition. It would contribute to the growth of neutralism. If the Americans do not worry and are apparently convinced that they have nothing to fear from communist subversion, from the existence of communist parties that function like states within states, why should they — the opponents of communism — agonize about the dangers?

Finally, what would be the effect of having Eurocommunists in the regime on the defensive power of NATO? To be sure, not even the communists would ask at the beginning for the Ministries of the Interior or the Police. But how could the vital secrets of western European defense be kept with the communists within the government, when they are so often compromised even when communists are outside the government? For all their criticisms of the internal regime of the Soviet Union, the Eurocommunist parties have taken essentially pro-Soviet positions on every major issue of foreign policy. The authors are convinced that the growth of Eurocommunism and faith in its credibility would adversely affect the future balance of power in Europe and in time the world as a whole. They take very seriously the likelihood that the Kremlin will consummate its great hope — which, today, is of increasing importance because of the Sino-Soviet rift — that western Europe can be detached from its alliance with the United States and that the great European sources of supply can be harnessed to the Soviet strategy of combatting the new yellow peril which communist propaganda implies is being inspired by American imperialism.

There is much more in this book than can be adequately treated in a short review. But a copy of it should be on the

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desk of every Member of the House of Representatives and the Senate.

Sidney Hook

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Can Controls Work? A Dissenting View

FORTY CENTURIES OF WAGE AND PRICE CONTROLS: HOW NOT TO FIGHT INFLATION: *By Robert L. Schuettinger and Eamonn F. Butler, with a Foreword by David I. Meiselman.* (The Heritage Foundation, Washington D.C., distributed by Caroline House, Ottawa, Illinois, 1979.)

The authors of this concise and useful survey of four millennia of attempts to substitute public bureaucracies for private markets have drawn a single moral from their conscientious and accurate study of standard scholarly sources. It is this: save in the most exceptional conditions such as the patriotic fervor evoked by a popular war like World War II, government regulation distorts markets, aggravates the very scarcities which politically justified its imposition, stimulates wide evasion and pervasive black markets, and ultimately collapses because of its own accumulated inequities and inefficiencies.

The eighteen chapters begin with the ancient world, advance to Rome, and continue along the path to Jimmy Carter's current experiment with quasi-voluntary wage and price guidelines. The authors examine St. Thomas' advocacy of just price, the French Revolution's assignats, the repeal of the English Corn Laws as a triumph of *decontrol*, World War I, Canadian and American policies during World War II, and postwar experiments in incomes policies in assorted countries. No scheme has ever worked very well for very long. The record collated by the authors implies that controls at most alter the time pattern of inflation so that, as in the Nixon episode, once they are weakened or removed, prices speedily rise enough or more than enough to compensate for the degree of suppression inflicted by controls. Nor have controls been any more successful in the totalitarian societies of Nazi Germany and Soviet Russia than in the democracies.

I can quarrel only rarely with the authors' history. Unlike Schuettinger and Butler, Cecil Woodham-Smith, a contemporary historian of the potato famine in 19th century Ireland, attributes much of its suffering and starvation precisely to the free market policies of an English government unwilling to give food to penniless peasants who could not pay for it.[1] On a

1. See *The Great Hunger* (New York: Signet, 1962).

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related point, the authors make a sweeping and questionable claim for the impact of the Corn Law repeal: ". . . from then on, the United Kingdom enjoyed a good prosperity which could not be directly attributed to any other single source." In point of fact, the Industrial Revolution had turned England into the workshop of the world while the Corn Laws were very much in force. Moreover, the "good prosperity" which followed their repeal was severely marred for English workers by the deep depression and high unemployment of the 1870s. Economic historians conventionally date the decline of the British economy from the 1880s, a scant generation after Robert Peel swept away agricultural protection. I shall resist all temptations to link the events.

The concluding pages of the volume examine the causes of inflation as a monetary phenomenon, discuss indexation, and advocate dismantling the apparatus of government regulation of all varieties. Here, as throughout, the tone of argument is temperate and civil. The text is enlivened by the stylish cartoons of MacNelly — the conservative answer to Herblock.

In Defense of Controls

Although I am grateful to the authors of this volume for a valuable addition to my reference shelf, I remain an unrepentant advocate of controls and other government regulations. I offer four reasons for this obduracy:

Equity: During wars, embargoes, or other emergencies, rationing of necessities by price deprives low income families of access to vital items. The claim that raising prices enlarges supply is an inadequate response. In the short run, deprivation may inflict severe suffering on the most vulnerable members of the community. When the emergency stretches over several years as in a major war and the bulk of the commodity in question is reserved for the armed services, the possibility of significant enlargement of supply is in any case small.

Market failure: Although my wife and I are beneficiaries of New York City's rent controls, I am quite willing to concede that the controls ought to be phased out and a set of housing allowances to low income renters substituted in their place. All the same, an important reason that rent controls survive is the popular belief, supported by a good deal of evidence, that the construction industry is unable or unwilling to build decent accommodations within the reach of families of

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moderate or even average incomes.

However poorly managed, public intervention in the health sector represents a second important instance of response to the inadequacies of fee-for-service medical practice.

Imperfections of Competition: The benign consequences of competition are to be enjoyed only in the presence of at least an approximation of classical price rivalry. It has long been notorious that in most of American manufacturing, where concentration ratios are high, competition focuses upon style, product differentiation, advertising, and marketing ploys. As students of price theory learn, under conditions of monopoly, shared monopoly, or oligopoly, prices are higher, output is smaller, and resources are otherwise allocated than they would be in the company of pure competition.

It has long puzzled me that current partisans of Chicago economics ignore the ominous extent of concentrated market power embodied in the conglomerates and multinational corporations which bestride the world economy. This neglect is the more astonishing because one of the founding fathers of the Chicago school, Henry Simons, was prepared to argue way back in 1934 in favor of federal incorporation and powerful antitrust enforcement. He is worth quoting:

> Horizontal combination should be prohibited, and vertical combinations (integration) should be permitted only so far as clearly compatible with the maintenance of real competition. Few of our gigantic corporations can be defended on the ground that their present size is necessary to reasonably full exploitation of production economies: their existence is to be explained in terms of opportunities for promoter profits, personal ambitions of industrial and financial 'Napoleons,' and advantages of monopoly power.[2]

As far as I can see, the only feasible alternative to a politically implausible program of radical antitrust is the substitution of public pricing criteria for those of private, corporate bureaucracies responsible only to managers and stockholders. Where competition is deficient, prices are distorted and resources are misallocated. Intelligent government intervention serves the

2. See "A Positive Program for Laissez-Faire," *Economic Policy for a Free Society* (Chicago: University of Chicago Press, 1948) pp. 59-60.

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public interest. It may, indeed, generate results closer to competitive outcomes than those of quasi-monopolistic private markets.

Externalities: We live in a dangerous world, frequently made still riskier by otherwise innocent endeavors by entrepreneurs to maximize their profits. Corporate managers are not moral monsters when they yield to the strong human tendency to underestimate the harms their decisions may inflict on other people at distant dates, especially if the financial burdens can be shifted from corporations to victims or the public at large. Without environmental regulation, why should a steel plant add to costs by installing smokestack scrubbers? In the absence of the Occupational Health and Safety Administration, why not rely upon the alertness of employees and blame them for accidents? Pharmaceutical companies are tempted to market inadequately tested drugs. Chemical concerns like Hooker ignore the hazards of toxic wastes. Food processors give inadequate thought to the hazards of additives and preservatives.

These considerations fall far short of any blanket endorsement of *all* government interventions into the private sector. Indeed, a prudent friend of government action will be every bit as critical of incompetent or ill-conceived regulation as the editors of this journal. Nor do I intend to imply that the best designed set of price and wage standards or controls will succeed unless it is complemented by appropriate fiscal, monetary, and trade policies. Nor is there any need to control, except in the gravest of emergencies, retailing or other competitive activities. This said, I remain firmly of the view that the large corporation, the dominant institution of our time, requires constant supervision and regulation in the public interest.

A personal word in conclusion. I have enjoyed this foray onto hostile terrain. In this period of general reconsideration among economists, it helps to carry on the discussion in the civilized tones of *Policy Review*.

Robert Lekachman

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Essays on Capitalism

CAN CAPITALISM SURVIVE? *By Benjamin A. Rogge.* (Liberty Press, Indianapolis, Indiana, 1979.)

The title of this book is more than just an indication that Benjamin Rogge is not embarrassed by the term "capitalism." Rogge, Distinguished Professor of Political Economy at Wabash College, uses the title to echo a familiar quotation phrased in 1942 by Joseph Schumpeter, the Austrian-born Harvard economist, in his classic, *Capitalism, Socialism, and Democracy*: "Can capitalism survive? No, I do not think it can." Schumpeter went on to say that capitalism's "very success undermines the social institutions which protect it, and inevitably creates conditions in which it will not be able to live and which strongly point to socialism as the heir apparent."

Professor Rogge shows the same concern for the survival of capitalism that Schumpeter does, yet, in his own words, "My self-assigned task here has been one of diagnosis, not prescription." Still, his perceptive analysis of the attacks on capitalism can serve as a guide for policymakers (in both business and government) and, in that sense, acts as prescription for revitalizing the economy and defeating the apostles of economic collectivism.

In his chapter "The Case for Economic Freedom," Rogge notes that the free market is blind to politics, religion, and race, in the sense that people do not ask about the politics or the religion of the farmer whose potatoes they buy at the store. Essentially, the consumer aims at finding the best value available, regardless of the merchant's political or racial characteristics; the merchant in turn will sell to anyone who meets his price. However, capitalism does allow the individual to indulge his preference for political, religious, or racial distinctions. No doubt there are many residents of Skokie, Illinois, who would never sell their houses to a self-proclaimed Nazi, no matter what the price. Similarly, people of various backgrounds in Northern cities sometimes prefer to sell or rent their houses to individuals who share the same heritage. In the capitalistic system, individuals are allowed to express these

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preferences in their business dealings if they are willing to forego the best economic value or even to incur a loss.

Rogge uses an interesting example to show that capitalism is race-blind. Under South Africa's race laws, Orientals are categorized as "non-white." But, since trade with Japan has become so important, the South African government has declared that Japanese visitors to the country be designated officially, legally, "white." Human rights advocates will argue that this item illustrates the moral bankruptcy of capitalism — that only profits will induce humanitarian changes. That argument has two weaknesses: First, no amount of preaching could have induced South Africa to change its laws. Second, notice that the *laws* were changed; these laws required a system of government-enforced discrimination. State-enforced segregation is not a characteristic of capitalism, but a violation of it. In a truly free market, individuals could discriminate only at the loss of their economic self-interest.

In another chapter, entitled "Christian Economics: Myth or Reality," Rogge lists several basic assumptions of the Christian religion that are useful in economic analysis: man is imperfect; he is a responsible being; he has freedom to choose; he has obligations to his fellow men. Obviously, as numerous Scriptural passages attest, Judaism and Christianity are not at all antithetical to capitalism.

One final argument of Rogge deserves comment. In his discussion of "The Labor Monopoly" he suggests a return to the jurisdiction of common law, sweeping away the statutes (Clayton, Norris-Laguardia, Taft-Hartley) that deal with trade unionism. He goes so far as to say that "the right-to-work law is an unwarranted intrusion by the state in the dealings of employers and employees." Such a position, however well-intentioned, seems unrealistic in the current situation. Today, with organized labor monopolizing the work force in most industrial states, most employers are forced to hire union labor exclusively. Until legislation granting the union monopoly is repealed, the right-to-work laws protect individual workers and entrepreneurs from coercion. Therefore, it seems to me, these laws are just and moral. And Rogge himself announces early in this book that "my central thesis is that the most important part of the case for economic freedom is not its vaunted efficiency as a system for organizing resources, not its dramatic success in promoting economic growth, but rather its

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consistency with certain fundamental moral principles of life itself."

David A. Williams

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New Books and Articles in Public Policy

Economics and Business

Barbara Blumenthal

"How Many People Really Work for the Feds?" *National Journal*, May 5, 1979.

Officially, the federal government numbers 2.1 million civilian employees on its payroll. But that figure grossly understates the real federal workforce, since many more workers rely for their salaries on funds furnished directly or indirectly by the federal government. This article details the results of an investigation into the true size of the federal employee force and concludes that the revised total might be somewhere in the neighborhood of 10 million. Many agencies were unable to respond to the survey questions; the Office of Management and Budget puts a ceiling on their own in-house employment levels, but they have a large undefined secondary constituency. And at many federal agencies (HEW, HUD, Labor), the majority of workers receiving federally-sponsored salaries are not working on projects connected with the functions of the federal government. (See also, Donald Lambro, "In and Out at HEW," *Policy Review*, Winter 1979.)

John Burton

The Trojan Horse: Union Power in British Politics (The Adam Smith Institute, 50 Westminster Mansions, Little Smith St., London SW1, England; P.O. Box 374, Leesburg, Virginia 22075) 1979.

This book attempts not only to illustrate but also to explain the increasing influence of trade unions on the British political scene. Burton disputes the notion that this power stems from increasingly effective strike threats. On the contrary, he says, union political power grows out of the unions' political activity. By controlling votes to forestall unfavorable legislation and to discourage enforcement of existing laws, unions have translated their power into the political realm entirely. The author notes that unions in Great Britain are now effectively immune from the law, and their immunity begets defiance of both popular and Parliamentary will. Burton argues that the British experience should be instructive to those responsible for labor policy today in the United States.

Michael R. Darby

The Effects of Social Security on Income and the Capital Stock (American Enterprise Institute, 1150 17th St., N.W., Washington, D.C. 20036) 1979.

Since the beginning of the program, economists have asked two questions about the effect of Social Security on the nation's overall economic performance. First, does it reduce the amount of personal saving or investment relative to gross income? Second, does it reduce the number of potential workers who do actually join the work force? If the former is true, investment would decline; if the latter, overall

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production would decline. In either case, the economy as a whole would be adversely affected. Analyzing the ambiguous available evidence, Darby concludes that Social Security does indeed produce both undesirable results, reducing the nation's capital stock by anywhere from one to fifteen percent. Available alternatives would avoid these uneconomical results.

H. E. Fresch, III, and Paul B. Ginsburg

Public Insurance and Private Medical Markets: Some Problems of National Health Insurance (American Enterprise Institute, 1150 17th St., N.W., Washington, D.C. 20036) 1978.

In the debate over national health insurance (NHI), most discussion has involved the questions of who should provide the service and how it should be financed. This study analyzes the other crucial question: what type of benefits should be provided? To maximize efficiency and minimize the incentive toward unnecessary medical care, the authors argue that any NHI system should maintain the private sector of the health care industry. Health maintenance organizations (HMOs) provide competitive services at competitive rates, thereby preserving the marketplace efficiencies. The authors dissect and critique various models within that form.

Israel M. Kirzner

The Perils of Regulation: A Market-Process Approach (University of Miami Law and Economics Center, P.O. Box 248087, Coral Gables, Fla. 33124) 1978.

In this essay, published as an Occasional Paper by the University of Miami's Law and Economics Center, Kirzner applies the analytic techniques of the Austrian School to the problems of government regulation in the economy. He acknowledges, but does not pursue, the argument that regulation itself produces variations from market equilibrium, and market inefficiencies. He concentrates rather on the stifling effect regulation has upon entrepreneurship. By reducing the rewards for taking economic risks, regulation disrupts the process of entrepreneurship, the key element in a free economy. Kirzner argues that this hindrance distorts market performance. Viewing the market system as a process rather than a mechanism, he derides these restraints on the process of innovation and reward.

Melvyn B. Krauss

The New Protectionism: The Welfare State and International Trade (International Center for Economic Policy Studies, 20 West 40th St., New York, N.Y. 10018) 1978.

Krauss approaches the specific issue of trade restrictions from a more general economic perspective. He sees the recent spate of non-price trade restrictions as a throwback to the old mercantilist theory, necessitated by the politics of the modern welfare state. This welfare state, Krauss argues, sets economic security as its primary goal, thereby leading to protection of weak industries within the economy. Such a policy leads to its own demise, however, since by reducing competitive incentives the welfare state precludes the economic growth its political outlook demands. The neo-mercantile theory leads to counterproductive international economic policies. (See Dr. Krauss's article on

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this subject in *Policy Review*, Spring 1979.)

Seymour Martin Lipset and William Schneider

"The Public View of Regulation," *Public Opinion* (American Enterprise Institute, 1150 17th St., N.W., Washington, D.C. 20036) Jan.-Feb. 1979.

The decade of the 70s has seen plummeting public confidence in virtually all societal institutions, notably including both business and government. The result, as Lipset and Schneider demonstrate, is an ambivalent attitude toward government regulation of the business sector. The public is suspicious of the efficacy of regulation and yet skeptical about how business would act in the absence of government controls. Paradoxically, a discernable majority opposes both increases and decreases in the level of government involvement.

Walter E. Williams

"Racism and Organized Labor," *Lincoln Review* (The Lincoln Institute for Research and Education, 1735 DeSales Street, Washington, D.C. 20036) Spring 1979.

Today organized labor is generally regarded as a political friend of the black worker, but Williams (a Distinguished Scholar of The Heritage Foundation) shows that the unions' historical record is one of exclusion and coercion of black workers. Even today union concerns — notably for minimum wage laws — work against the interests of unskilled black laborers. Unions work to enhance the condition of their members, not to extend new benefits to the black workers who have traditionally been kept outside the union and the job market.

With this inaugural issue, the *Lincoln Review* introduces a quarterly review for what the editor, J.A. Parker, describes as "America's black middle class." He writes: "Blacks are now expected to take stands on issues which, traditionally, were not considered to be 'black issues.' The *Lincoln Review* will serve as a platform for other black Americans who have accepted the challenge and are eager to share the responsibility."

Two other articles included in this issue are written by Nick Thimmesch, profiling Gen. Daniel "Chappie" James, and by Roy Innis, supporting tuition tax credits.

Education and Welfare

Paul Copperman

The Literacy Hoax: The Decline in Reading, Writing, and Learning in the Public Schools and What We Can Do About It (William Morrow and Co., New York) 1979.

Academic test scores have been declining dramatically for more than a decade, but Copperman traces the source of the decline back to the late 50s and early 60s. Not coincidentally, he observes, that same period saw the beginnings of massive federal involvement in education. Copperman argues that the welter of federal programs proved counterproductive; teachers and administrators devoted more time to bureaucratic paperwork than to actual teaching. He concludes with a set of interviews with victims of the "literacy hoax."

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Seth Cropsey

"Arab Money and the Universities," *Commentary*, April 1979.

Several universities – the author mentions Georgetown and the University of Southern California prominently – have recently accepted substantial grants from Arab countries. In the case of Southern California, observers charged that U.S. businessmen wishing to do business in Saudi Arabia were heavily pressured to contribute to the proposed academic center. At other schools Arab grants have involved some degree of pressure to adapt to the views of the donors. Many observers puzzle over the morality involved in accepting money from, and tacitly advancing the legitimacy of, regimes whose political views offend members of the university community. This article explores the question of allowing Arab regimes to sponsor American institutions.

Russell Kirk

Decadence and Renewal in the Higher Learning (Gateway Editions, 120 West LaSalle St., South Bend, Ind. 46624) 1978.

Having written about higher education for 25 years, Kirk now draws on his wealth of information to trace the academic history of the last quarter-century. The first section of the book consists of brief meditations on new heresies within the academic community, each one illustrated by one or more instructive incidents. The author traces the dissolution of academic standards from the rise of postwar egalitarianism through the tumultuous era of student revolt to the present climate of scholarly indifference. Having catalogued the loss of the traditional academic virtues, Kirk proceeds in the book's latter section to praise institutions where those virtues are still observed and to suggest further models for academic restoration.

Seth Kupferberg

"Teaching the Unteachable," *The New Republic*, April 14, 1979.

Harvard's Kennedy School of Government has set out to create what the University's President, Derek Bok, lauds as a "new profession." This short essay questions whether it is possible and/or desirable to design public policy on a professional basis. Kupferberg believes that policy decisions inevitably involve subjective political judgments that do not invite scientific or empirical scrutiny. Academic training does not necessarily contribute to an appreciation of the political mind, so schools of public policy can only train technicians. The graduate of these schools, if he pretends to proceed along scientific lines, is merely concealing his own political biases. Admitting the efficacy of professional training in showing how to advance toward a given defined goal, the author nevertheless argues that definition of that goal – and even the choice among means to pursue the goal – cannot be accomplished by professionals trained in the casework-analysis tradition.

Robert J. Samuelson, Rochelle L. Stanfield, and Linda E. Demkovich

"The War on Poverty's Paradoxical Legacy," *National Journal*, March 3, 1979.

Fifteen years after Lyndon Johnson inaugurated the War on Poverty, poverty rates are dropping and income inequalities seem to be growing less dramatic. Yet the myriad programs that comprise that War have come under increasing fire. The authors, writing in three separate

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articles on the same topic, suggest that the War on Poverty approach has exhausted its usefulness. Poor people have become more dependent on the federal government, rather than less. The concentration of poverty has moved from the rural South to the urban North. And while poverty receives routine policy consideration, it generates little compassion. The War on Poverty, which was founded on the basis of society's guilt feelings, has run into a backlash of resentment and frustration. (See also Morton Paglin, "Poverty in the United States: A Reevaluation," *Policy Review*, Spring 1979.)

Energy and the Environment

Petr Beckmann

Why "Soft" Technology Will Not Be America's Energy Salvation (The Golem Press, Box 1342, Boulder, Colo. 80302) 1979.

Beckmann, the author of *The Health Hazards of Not Going Nuclear*, continues his attack on the soft-energy advocates in this short, concise pamphlet. Arguing that oft-mentioned energy alternatives, particularly solar energy, produce diluted energy at high cost, he notes that these sources cannot currently survive without their advocates in the political realm — they cannot now compete in the economic realm. Beckmann argues that soft-energy advocates like Amory Lovins actually advance a political message that undermines contemporary cultural values.

Milton R. Copulos

"What Did Happen? What Have We Learned?" *National Review*, May 11, 1979.

In the aftermath of the Three Mile Island nuclear accident, a new debate on nuclear energy is inevitable — particularly since the accident came so soon after the Nuclear Regulatory Commission announced that it no longer accepted the safety analysis provided in the Rasmussen Report. The Three Mile Island mishap suggests some immediate conclusions and some ongoing questions. The event exposed flaws in the operation of the NRC and in the reaction of the utility; widespread confusion and bad judgment led to the escalation of the crisis. But the problems revealed can be solved, and nuclear energy remains a safe, viable option.

Also included in the same issue of *National Review*: "Nightmare or Bad Dream?" William Tucker points out that the nuclear plant's crisis gave the public a much more definite idea about the dimensions of a potential nuclear accident. Three Mile Island represented a compendium of human and mechanical errors, and still the impact was limited. The public could be reassured.

Bernard J. Frieden

The Environmental Protection Hustle (MIT Press, Cambridge, Mass. 02139) 1979.

In northern California, the movement toward limitations on housing growth has spawned an unjustifiable opposition to private home ownership in the suburbs, the author argues. What began as a legitimate effort to save San Francisco Bay and the Napa Valley became a crusade to preserve the benefits accruing to present residents. The resulting inhibi-

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tions on construction and ownership help drive the costs of homes to levels unattainable except to the economic elite. At some point, Frieden argues, the environmental needs of the middle class — the potential homeowners and developers — should also be considered. Too often, he concludes, regulators use environmental issues as an excuse to justify self-serving policies. Frieden's warning serves environmentalists and developers alike.

Craig S. Karpel

"Ten Ways to Break OPEC," *Harper's*, January 1979.

With obvious relish, this article attacks several widespread ideas which the author regards as unfounded. He maintains that there is no shortage of oil supplies and that a repetition of the OPEC boycott is impossible (because the Saudis have huge outstanding international debts and a massive development bill to pay). But most importantly, the author argues that OPEC is an extremely vulnerable political alliance, ready to split apart as soon as the largest energy consumers provide inducements. Karpel lists ten steps by means of which the U.S. could foster competition among the OPEC members and simultaneously insulate the country against OPEC power by providing our own energy reserves.

Edward Meadows

"What Carter's Oil Policy Won't Accomplish," *Fortune*, April 1979.

Meadows recites what is now a familiar litany of complaints against government action in the energy sector. Lease applications are processed slowly; new refinery projects are bogged down in red tape; tax policies fail to encourage exploration of new potential sources; controls work at cross purposes. The net effect in the short run is that the President's energy package cannot insulate the American economy against the possible distresses of another severe shortage.

Robert W. Rycroft

"Energy Policy Feedback: Bureaucratic Responsiveness in the Federal Energy Administration," *Policy Analysis* (University of California Press, Berkeley, Calif. 94720) Winter 1979.

Analyzing the FEA from the standpoint of organizational function, Rycroft finds that its responsiveness to public opinion was varied. Because of the considerable range of freedom Congress gave the agency, the feedback mechanisms did not perform as anticipated, although the Office of Exceptions and Appeals responded to a wide variety of special-interest complaints. On a more general level, the FEA evidently devoted more effort — largely unsuccessful — to controlling public opinion than to responding. The agency did act in accordance with public opinion on some issues (corporate profits, oil import controls), but not others (deregulation, new production).

David A. Stockman

"The Wrong Way? The Case Against a National Energy Policy," *The Public Interest* (10 East 53rd St., New York, N.Y. 10022) Fall 1978.

Past energy policies (such as Ford's idea of assuring U.S. energy independency by 1980) have proceeded from bad assumptions to inaccurate conclusions. The author sees three assumptions as key ingredients of the current call for a new national policy: 1) present fuel supplies are nearly exhausted, 2) the market has failed, due to OPEC's political

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machinations, 3) home-grown energy sources must be developed at all costs. Stockman makes the radical suggestion that the "moral equivalent of war" has been won, and the energy crisis is a myth. In refusing to panic, he argues, the electorate and the marketplace have shown their stability and — for now — solved the problem with minimum dissatisfaction.

Foreign Policy

Peter Bauer and John O'Sullivan

"The Case Against Foreign Aid," *Commentary*, December 1978.

The authors argue that foreign aid fulfills none of the purposes for which it is designed. It does not help to speed the development of the underdeveloped countries, nor to eliminate poverty, in the absence of widespread structural changes in those nations' political economies. The themes of redistribution and restitution for past injustices are largely overblown by advocates of such aid. And since the recipient countries generally ignore the intent of the donors, aid cannot be said to advance Western self-interests. The authors argue that foreign aid merely contributes to the politicization of life in the less-developed countries, since it goes to the governments to be used according to their purposes. The people who benefit most are those who espouse the spurious vision of a united Third World and whose ideas tend toward an elite supervision over world affairs.

Carl Gershman

"Selling Them the Rope," *Commentary*, April 1979.

Soviet communism has proved far less efficient than capitalism by any normal economic standard, and the Soviet Union relies heavily upon the import of U.S. technology in particular. This trade, often cited as a way to bridge the diplomatic chasm between the two countries, has two bad side effects. First, it helps the Soviets build more armaments. Second (which is much the same point), it protects them from the necessity of undergoing the liberalization and decentralization that would produce technological advances of their own. Capitalism thus furnishes communism with the tools that enable it to compete for ideological supremacy. The author recommends renewed strict controls on technological transfers, rather than the current ineffective economic diplomacy. He argues that a partial boycott on technological transfers would have a profound effect, since our superiority in that realm is unmatched and the Soviet need is inexorable.

Roy Godson

Black Labor as a Swing Factor in South Africa's Evolution (International Labor Program, Georgetown University, Washington, D.C. 20057) 1979.

Godson argues that black trade unions — not allowed official recognition under current South African law — could form an ideal base for the development of responsible black leadership in that country. The unions would provide a power base for black organization, a means for black leaders to establish a recognized constituency and legitimacy. With the demand for skilled labor growing steadily, such unions could

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exercise a powerful and continuing leverage for peaceful democratic reform.

Nimrod Novik

On the Shores of Bab Al-Mandab (Foreign Policy Research Institute, 3508 Market St., Suite 350, Philadelphia, Penna. 19104) 1979.

The Strait of Bab Al-Mandab, connecting the Red Sea with the Gulf of Aden and the Arabian Sea, has suddenly assumed major strategic significance. The surrounding countries — Ethiopia, North and South Yemen, and Somalia — have all been torn by civil strife recently, and the recent revolt in Iran has underlined the volatility and importance of the entire region. Through it all, this monograph reveals, Soviet foreign policy has been active, the Soviets heavily involved throughout the area in protecting and advancing their own interests. By contrast, the United States has neglected the area, failing to understand its problems and respond with an active policy. Novik cites the dangers of continuing passivity. The first step to a constructive policy would be a comprehensive study of the intricate historical background and animosities that plague the area and define its present realities.

John E. Reilly

"The American Mood: A Foreign Policy of Self-Interest," *Foreign Policy* (P.O. Box 984, Farmingdale, N.Y. 11737) Spring 1979.

This article presents and analyzes the findings of a Gallup-Chicago Council of Foreign Relations survey of public attitudes on questions concerning foreign policy. Among the findings: foreign policy occupies the public mind less than domestic issues, and even in the international sphere economic concerns are paramount — thus the prime concern is the dollar's eroding strength. The public perceives a growing threat of Soviet military domination and supports increased defense expenditures, but simultaneously supports arms control. Popular opinion is concerned about America's image abroad, less worried about human rights around the world.

John J. Tierney, Jr. (editor)

About Face: The China Decision and Its Consequences (Arlington House, 165 Huguenot St., New Rochelle, N.Y. 10801) 1979.

This compilation of essays by government officials, scholars, and congressmen past and present, appeared as a prompt rejoinder to President Carter's decision to normalize relations with the People's Republic of China and abrogate the defense treaty with Taiwan. Four senators (Dole, Garn, Goldwater, and Stone) add introductions. Essays are divided among four themes: 1) the two Chinas, 2) the historical background leading up to Carter's decision, 3) analysis of that decision, 4) reactions. The uniting elements are the belief that recognition was unduly hastened, that no significant advantages to the U.S. will result, that the betrayal of Taiwan was immoral and impolitic, and that Taiwan's future is now as uncertain as America's credibility has become.

Defense Policy

Yonah Alexander (editor)

"Terrorism and the Media," A special double issue of *Terrorism: An*

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International Journal (Crane, Russak & Co., 347 Madison Ave., New York, N.Y. 10017) Vol. 2, Nos. 1 & 2, 1979.

Terrorists rely on the news media in free countries to broadcast their escapades widely, thereby generating the publicity they desire. Yet to inhibit press coverage of terrorism would be to deny the public its right to know. This double issue explores that dilemma, including the contents of two seminars on the topic of terrorism and publicity. The first conference, held in Oklahoma City in 1976, considered "Terrorism: Police and Press Problems." The second, more general conference, from which the overall title of this special issue is taken, was held in New York in 1977. Contributions from some 40 reporters, scholars, journalists, and police officials are included.

Peter Braestrup

"The American Military: The Changing Outlook," *The Wilson Quarterly* (Smithsonian Institution Building, Washington, D.C. 20560) Spring 1979.

An overview of the entire debate surrounding the armed forces and their potential. This article is sandwiched between two other pieces to constitute a quick, comprehensive review of American military needs. David MacIsaac and Samuel F. Wells, Jr., offer a survey history of American military policy, and Charles Moskos summarizes the arguments over the all-volunteer force. The Braestrup piece, which includes Defense Secretary Harold Brown's analysis of Soviet capabilities, lists the options available to Carter today and the political forces behind each option. Moskos delineates the dramatic changes and new problems in Army life and calls for a new GI Bill.

Igor S. Glagolev

"The Soviet Decision-Making Process in Arms Control Negotiations," *Orbis* (3508 Market St., Suite 350, Philadelphia, Penna. 19104) Winter 1978.

The author, a former Soviet arms control official, points out that the Soviet analysis of arms-control issues differs greatly from the analysis of U.S. agencies. There is little popular participation or information at any level. The single overriding factor is the military one, and the military-industrial establishment dominates all other parties to the decision-making process. Only stark economic realities limit the production of arms. The rhetoric about "balance of forces" is intended for Western ears; it strengthens the hand of Soviet military officials seeking increased outlays.

Jack F. Kemp

"Congressional Expectations of SALT II," *Strategic Review* (United States Strategic Institute, Central Plaza Building, 675 Massachusetts Ave., Cambridge, Mass. 02139) Winter 1979.

Congress will judge the SALT agreement in the light of our past experiences with SALT I as well as the stated U.S. aims for the pact. The crucial questions will concern the ability of the proposed treaty to advance real strategic equality and stability and to reduce the level of armaments. Verification, of course, will play a vital role in the debate, as will the effect SALT II might have on the security interests of American allies abroad. Since a new SALT agreement would con-

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dition the entirety of U.S. defense policy, congressional debate will be both informed and demanding. Kemp expects that Congress will be far more skeptical in this case than it was in ratifying SALT I.

Paul H. Nitze, James E. Dougherty, and Francis X. Kane

The Fateful Ends and Shades of SALT: Past . . . Present . . . And Yet to Come? (National Strategy Information Center, 111 East 58th St., New York, N.Y. 10022) 1979.

This new book combines three essays on the SALT II talks: "SALT: An Introduction to the Substance and Politics of the Negotiations" (Dougherty), "The Merits and Demerits of a SALT II Agreement" (Nitze), and "Safeguards from SALT: U.S. Technological Strategy in an Era of Arms Control" (Kane). The focus throughout is on not only the military complexities of the proposed agreement, but also the international strategic context. The authors raise serious doubts about the growing Soviet superiority in strategic armaments, problems of verifiability, and the general military and geopolitical imbalance that the proposed treaty would solidify.

Eugene V. Rostow

"The Case Against SALT II," *Commentary*, Feb. 1979.

This comprehensive review of the arguments presents the case in concise detail. The SALT treaty, according to Rostow, will not decrease tension between the U.S. and the Soviet Union – that is a matter for other aspects of diplomatic interchange, and hostility begets arms races, not vice versa. The historical record suggests that no relaxation will occur, and SALT I predated an unusually testy period in U.S.-Soviet relations. Furthermore, Rostow continues, the agreement leaves the U.S. in an untenably inferior position in the strategic balance. Nor would the treaty save money in arms expenses, since we should still be obliged to modernize present equipment. Nor is it verifiable. Before concluding his case, Rostow posits the need for a new strategic theory more flexible than that of massive retaliation and mutually assured destruction.

William Schneider, Jr.

"Survivable ICBMs," *Strategic Review* (United States Strategic Institute, Central Plaza Building, 675 Massachusetts Ave., Cambridge, Mass. 02139) Fall 1978.

As the intercontinental missile forces of the Soviet Union become increasingly powerful and accurate, U.S. ICBMs become correspondingly vulnerable to attack, Schneider reasons. The SALT II treaty seems at best unlikely to improve the situation, and any new technology will become effective only after a lag time during which that technology must be developed and installed. As an interim remedy Schneider advocates the development of a mobile (MX) missile system utilizing a deceptive multiple-target delivery and some measure of ballistic missile defense.

William R. Van Cleave and W. Scott Thompson

Strategic Options for the Early Eighties: What Can Be Done? (National Strategy Information Center, 111 East 58th St., New York, N.Y. 10022) 1979.

This book is the final product of a conference sponsored by the

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National Strategy Information Center in June 1978 to consider short-term problems of national defense at the strategic level. Assuming that longer-term policies can take force in the mid- to late-80s to counter Soviet initiatives, the participants consider the U.S. shortfall in the interim period. Eight papers, each one followed by discussion, present the possible "quick fix" solutions that are now technically feasible. Ranging across the strategic field, these "quick fix" possibilities all aim to obviate a Soviet first-strike advantage. The book has implications for SALT II negotiations in that a) it denies that nothing can be done to counter short-run Soviet dominance and b) it attacks several possible SALT planks.

The Washington Quarterly

"A Strategic Symposium: SALT and U.S. Defense Policy" (Transaction Periodicals Consortium, Rutgers University, New Brunswick, N.J. 08903) Winter 1979.

This collection of short essays reponds to questions posed by the editors of *The Washington Quarterly*. Is there in fact an arms race? What constitutes strategic stability? Would SALT II promote it? If SALT II is not accepted (or not acceptable) what are the alternatives? The responses range across a field of opinion as broad as the political spectrum that embraces the participants in this symposium: Senator John Culver, Helmut Sonnenfeldt, Henry Rowen, James E. Dornan, Jr., Colin Gray, Jeremy Stone, and others.

Political Affairs

James Fallows

"The Passionless Presidency," *The Atlantic*, May 1979.

Fallows, an early Carter supporter and sometime White House speechwriter, has lost his faith in Carter's earlier political promises. Mournfully and yet sympathetically, he ticks off the personal characteristics that prevent Carter from fulfilling the hopes of his earliest and stongest supporters. He cites a shallow understanding of political complexities, an inability to cope with bureaucratic and administrative details efficiently, and, above all, a lack of motivating purpose. Lacking a clear and embracing vision of the society he hopes to achieve, Fallows argues, Carter is unable to inaugurate effective action on any front. This article, which has provoked widespread attention already, will be continued in the June issue of *The Atlantic*.

Edward W. Lehman and Anita M. Waters

"Control in Public Research Institutes: Some Correlates," *Policy Analysis* (University of California Press, Berkeley, Calif. 94720) Spring 1979.

What sort of organizational structure is best suited to the needs of a public policy institute seeking direct impact on government policy decisions? The authors studied 33 such institutes, and classified them according to a) their degree of internal bureaucracy or collegiality and b) their success in influencing government decisions. They find a distinct correlation between the institute's degree of bureaucracy and

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its effectiveness in this realm, perhaps because the more bureaucratized institutes are the oldest and best established. An interesting side note: no matter what the organization's type, it becomes more effective as it increases its reliance on staff economists.

Ann R. Markusen and Jerry Fastrup

"The Regional War for Federal Aid," *The Public Interest* (10 East 53rd St., New York, N.Y. 10022) Fall 1978.

Depending on how the statistics are arranged, the distribution of federal funds can be shown either to favor or penalize given sections of the country. The more important question, the authors argue, is whether the federal aid effectively fulfills the purposes for which it is intended. Different regions often have converging interests, which are obscured by the battle over regionally-allocated aid programs. Rather than analyze the net flow of federal aid to the various regions, policymakers should assess the intrinsic benefits of the aid programs to the nation as a whole.

Also included in this issue of *Public Interest* is a companion article by William Alonso, entitled "Metropolis Without Growth." Alonso shows that the patterns of urban-rural migration are often misunderstood because of lingering and inaccurate symbolic attachments to urban or rural life. A useful demographic analysis of metropolitan population loss must include a new interpretation of the causes of migration.

Judith V. May and Aaron B. Wildavsky (editors)

The Policy Cycle (Sage Publications, 275 Beverly Dr., Beverly Hills, Calif. 90212) 1978.

This theoretical study is Volume Five in the Sage Yearbooks in Politics and Public Policy series, sponsored by the Policy Studies Organization. Using a series of selected case studies, the editors have organized essays around the processes of policymaking, from recognizing and analyzing the problem, through designing and promoting a solution, implementing and evaluating it, and finally terminating it when the perceived need has been eliminated. Throughout, the focus is on the generic characteristics common to all public policy processes.

Daniel Patrick Moynihan

"Social Science and the Courts," *The Public Interest* (10 East 53rd St., New York, N.Y. 10022) Winter 1979.

Ever since Justice Brandeis began including sociological data in his legal opinions, the courts have been preoccupied with whatever information social science can shed on the legal questions at hand. Moynihan argues that the trend is probably irreversible, since today's social science makes so many claims to knowledge; the appropriate research can uncover new facts to be weighed in most legal cases. But there are two other factors which judges should keep in mind. First, social science is concerned with predicting the future, while the courts should be confined to ordering it. Social science is concerned with probable results, while the courts must be concerned with present realities. Second, social science inevitably reflects the political prejudices of the researchers involved, while of course the courts should never stray from interpreting the meaning of the laws.

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Leonard Reed
"The Budget Game and How to Win It," *Washington Monthly* (1028 Connecticut Ave., N.W., Washington, D.C. 20036) January 1979.
The Office of Management and Budget assigns analysts to each federal agency to assess and rate the agency's budgetary needs. But these OMB analysts are overpowered and/or outflanked by the agency's own budget officers. The agency officers, who are among the most eagerly sought and politically astute figures in Washington, know how to use external political considerations to pad their budgets and conceal waste within the existing appropriations. By threatening legislators' pet projects, or claiming the seal of Presidential approval, or appealing to administrative hierarchs, the budget officers work their will on OMB. The problem is exacerbated by the presence of a naive new Administration.

Other Books and Articles Briefly Noted

David Abshire
Pendulum of Power (Georgetown Center for Strategic and International Studies, 1800 K St., N.W., Washington, D.C. 20006). An examination of the changing relationship between the Executive and Legislative branches of the U.S. government.

Tom Boardman and Nicholas Ridley
The Future of Nationalized Industries (Aims for Freedom and Enterprise, 40 Doughty St., London WC1N 2LF, England).

Kenneth W. Chilton
A Decade of Rapid Growth in Federal Regulation (Center for the Study of American Business, Washington University, Box 1208, St. Louis, Mo. 63130).

Philip C. Clarke
National Security and the News Media (America's Future, 542 Main St., New Rochelle, N.Y. 10801).

James Hyatt
How Demographics Affect the Future of Business (Georgetown Center for Strategic and International Studies, 1800 K St., N.W., Washington, D.C. 20006).

Reginald H. Jones
Technological Innovation: How Do We Reverse the Decline? (Center for the Study of American Business, Washington University, Box 1208, St. Louis, Mo. 63130).

Keith Joseph
Solving the Union Problem is the Key to Britain's Recovery (Center for Policy Studies, 8 Wilfred St., London SW1E 6P1, England).

Donald L. Kemmerer
Why a Gold Standard and Why Still a Controversy? (Committee for Monetary Research and Education, P. O. Box 1630, Greenwich, Conn. 06830).

William Kintner, John Davenport, and Phillip Clarke
South Africa: The Fateful Struggle (American Security Council, 499 South Capitol St., Suite 500, Washington, D.C. 20003).

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Stephen C. Littlechild
The Fallacy of the Mixed Economy: An "Austrian" Critique of Conventional Economics and Government Policy (CATO Institute, 1700 Montgomery St., San Francisco, Calif. 94111).

Richard B. McKenzie
Voter Apathy: The Dimensions of a Growing Problem (Fiscal Policy Council, 100 East 17th St., Riviera Beach, Fla. 33404).

Richard Magat
The Ford Foundation at Work: Philanthropic Choices, Methods and Styles (Plenum Publishing Corp., 227 West 17th St., New York, N.Y. 10011).

William Niskanen
Controlling the Growth of Government: The Constitutional Amendment Approach (Center for the Study of American Business, Washington University, Box 1208, St. Louis, Mo. 63130).

Svetozar Pejovich
Politics and Economics of the USSR (The Fisher Institute, 12810 Hillcrest Road, Dallas, Tex. 75230).

Herbert Shapiro
The New Foreign Policy Consensus (Georgetown Center for Strategic and International Studies, 1800 K St., N.W., Washington, D.C. 20006).

Wilson Schmidt
Balance of Payments and the Sinking Dollar (International Center for Economic Policy Studies, 20 West 40th St., New York, N.Y. 10018).

Kenneth A. Shepsle
Economic Growth and National Energy Policy: Some Political Facts of Life (Center for the Study of American Business, Washington University, Box 1208, St. Louis, Mo. 63130).

Jeff Swiatek
Steel, Jobs and the EPA (ACU Education and Research Institute, 600 Pennsylvania Ave., S.E., Suite 207, Washington, D.C. 20003).

Norman B. Ture
The Value Added Tax – Facts and Fancies (Institute for Research on the Economics of Taxation, 1100 Connecticut Ave., N.W., Washington, D.C. 20036).

Roland Vaubel
Choice in European Monetary Union (The Institute of Economic Affairs, 2 Lord North St., Westminster, London SW1P 3LB, England).

Max Ways (editor)
The Future of Business: Global Issues in the Eighties and Nineties (Georgetown Center for Strategic and International Studies, 1800 K St., N.W., Washington, D.C. 20006). With essays by Henry Kissinger, Peter Drucker, Max Ways, and others.

Compiled by Philip Lawler

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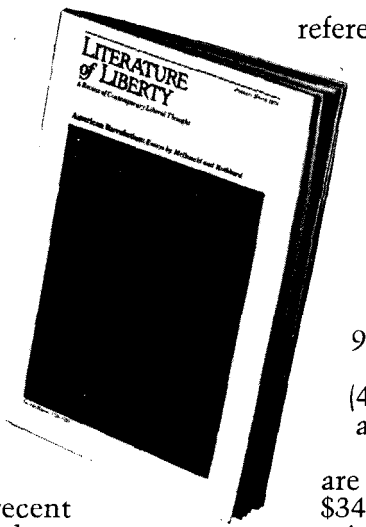

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Forthcoming Bibliographical Essays:

THE IDEA OF PROGRESS
Robert Nisbet *Columbia University*

JOHN STUART MILL
John Gray *Jesus College, Oxford*

NATURAL RESOURCES AND PROPERTY RIGHTS
John Baden and Richard Stroup *Montana State University*

DAVID RICARDO
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July
1979

Vincent J. Tarascio
Managing Editor

Southern Economic Journal

Volume 46
Number 1

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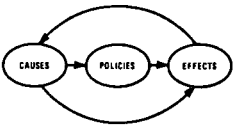

to promote the application of political and social science to important policy problems

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